



**USN/USMC  
Commander's Quick  
Reference Handbook  
for Legal Issues**

**2009**



<b>Report Documentation Page</b>			<i>Form Approved OMB No. 0704-0188</i>		
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1. REPORT DATE <b>2009</b>	2. REPORT TYPE	3. DATES COVERED <b>00-00-2009 to 00-00-2009</b>			
4. TITLE AND SUBTITLE <b>USN/USMC Commander's Quick Reference Handbook for Legal Issues</b>		5a. CONTRACT NUMBER			
		5b. GRANT NUMBER			
		5c. PROGRAM ELEMENT NUMBER			
6. AUTHOR(S)		5d. PROJECT NUMBER			
		5e. TASK NUMBER			
		5f. WORK UNIT NUMBER			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Naval Justice School ,Newport ,RI</b>		8. PERFORMING ORGANIZATION REPORT NUMBER			
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)		10. SPONSOR/MONITOR'S ACRONYM(S)			
		11. SPONSOR/MONITOR'S REPORT NUMBER(S)			
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>170</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

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## **Section I: MILITARY JUSTICE**

### **NCIS REPORTING & MILITARY JUSTICE INVESTIGATIONS**

**REFERENCES:** (a) Manual for Courts-Martial (RCM 303)  
 (b) SECNAVINST 5430.107 (series)  
 (c) JAGMAN  
 (d) SECNAVINST 1752.4 (series)

**REPORT OF OFFENSES (COMPLAINTS):** May come to command attention in variety of ways (e.g. shore patrol, MAA, Incident Complaint Report (ICR), civilian law enforcement, individual (military or civilian), in person, by phone, or by mail). CO must investigate all complaints [see reference (a)]. Degree of investigation will depend on nature and seriousness of complaint.

**MANDATORY REFERRAL TO NCIS PRIOR TO COMMAND INVESTIGATION:** Reference (b) mandates that certain incidents immediately be referred to NCIS whether occurring **on or off base and regardless of civilian investigative involvement**. These incidents are:

- Actual, suspected, or alleged major criminal offenses, to include espionage and acts of terrorism [see reference (b), ¶ 6.b]. “Major criminal offenses” are offenses punishable under the UCMJ by more than one year of confinement [see reference (b), ¶ 3.i];
- Non-combat deaths when the cause of death is not medically attributable to disease or natural causes [see reference (b), ¶ 7.b(1)(a)];
- Fires or explosions of unknown origin affecting military property [see reference (b), ¶ 7.b(1)(b)];
- Theft or loss of ordnance, narcotics, dangerous drugs, or controlled substances [see reference (b), ¶ 7.b(1)(c)];
- Disappearance of a command member when foul play cannot be excluded [see reference (b), ¶ 7.b(1)(d)];
- All instances of suspected fraud against the government within the Navy/Marine Corps [see reference (b), ¶ 7.b(3)]. “Fraud against the government” is a category of major criminal offenses characterized by intentional deception designed to unlawfully deprive the United States of something of value or to seek from the U.S. a benefit, privilege, allowance, or consideration to which a person is not entitled [see reference (b), ¶ 3.e] (e.g., theft of government property; bribery; receiving or giving gratuities; conflicts of interest; violation of anti-trust laws; and false statements/claims for pay and allowances, procurement, property disposal, subsistence, unauthorized services, non-appropriated funds, foreign military sales, and personnel matters);

- Actual, potential, or suspected acts of espionage, terrorism, sabotage, or assassination and actual, suspected, or attempted defection by DON personnel [see reference (b), ¶ 7.b(4)(a)];  
\_\_\_\_\_
  - Certain internal security incidents, such as loss, compromise, or suspected compromise of classified information; any request for classified information other than through official channels; requests for unclassified information by associates of a foreign government; unofficial contacts with officials of a foreign government or international terrorist organization; incidents of suicide or attempted suicide by personnel with access to classified information; or the disappearance or unauthorized absence of personnel with access to classified information [see reference (b), ¶ 7.b(6)];  
\_\_\_\_\_
  - National security cases [see reference (c), § 1026]. A “national security case” is any case of actual, attempted, or a conspiracy to compromise a military or defense advantage over any foreign nation or terrorist group; willful compromise of classified information; overt or covert acts which affect the capability to successfully resist hostile or destructive action, or acts of terrorism; and  
\_\_\_\_\_
  - Sexual assaults [see reference (d), § 4.a]. “Sexual assault” includes rape, indecent assault, forcible sodomy, and assault with the intent to commit rape or sodomy, all of which are included under the mandatory reporting category of “major criminal offenses” [see reference (b), ¶ 3.i].  
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**WHEN NCIS DECLINES AN INVESTIGATION:** NCIS may, at its discretion, decline any investigation, but shall expeditiously inform the affected command. A command may then pursue a command investigation (e.g., one officer/CPO/Petty Officer; disciplinary review board; XOI) or request assistance from the Security Department.

## HANDLING SEXUAL ASSAULT ALLEGATIONS IN THE USMC

**REFERENCES:** (a) SECNAVINST 1752.4 (series)  
 (b) MCO 1752.5 (series)  
 (c) MCO 5740.20 (series)

### GENERAL:

- Sexual assault is a criminal act and is not tolerated [see reference (b), ¶ 2.a]. References (a) and (b), entitled Sexual Assault Prevention and Response, provide specific policies, guidance, and responsibilities for handling sexual assault allegations.
- The term “sexual assault” includes rape, forcible sodomy, assault with the intent to commit rape or sodomy, indecent assault, and any attempt to commit such offenses [see reference (b), ¶ 2.a].

**COMMANDER’S RESPONSIBILITY:** Commanders must have a thorough knowledge of reference (b) to fully understand the scope of their responsibilities, and those of the Marines under their command, when handling sexual assault allegations. Highlights of reference (b) include [see reference (b), ¶ 3.a]:

- Leadership is the key to sexual assault prevention and response;
- The commander’s role in prevention is to establish a climate that confronts the beliefs and values that cause and reinforce sexual assault, to establish clear standards for personal behavior, and hold offenders accountable;
- As leaders, commanders must be keenly aware of and sensitive to the climate of their units; and,
- Commanders must continuously educate their Marines on how to prevent incidents of sexual assault, while also encouraging victims and witnesses to report these incidents when they occur.

### REPORTING REQUIREMENTS:

- Commanders shall immediately report all actual, suspected, or alleged sexual assaults to PMO. PMO will ensure necessary notifications are made to Naval Criminal Investigative Service [see reference (b), ¶¶ 6.b(5), 6.h(4)]. Therefore, commanders must not conduct independent command investigations into alleged sexual assaults.
- Reference (c) requires commanders to report within 24 hours via OPREP-3 SIR reports of any serious crime (i.e., felony arrest) or incident that may result in domestic or foreign criminal jurisdiction over Marine Corps personnel and their dependents or that may arouse public or congressional interest [see enclosure (3)]. Sexual assaults are reportable incidents as serious crimes. The commander of the alleged offender will submit an OPREP-3 SIR; if the alleged offender is unknown, the reporting commander will be that of the alleged victim.

- Reference (b) requires staff judge advocates to report all sexual assaults to the Headquarters Marine Corps-monitored Sexual Assault Incident Reporting Database (SAIRD) [see ¶ 6.f(2)]. As a result, close coordination with your staff judge advocate is necessary to ensure timely and accurate data is reported.

**CARE FOR SEXUAL ASSAULT VICTIMS:** In cases of sexual assault, the specialized concerns and issues (physical, mental, and emotional) surrounding such assaults require all personnel involved in the case to give additional consideration to the sensitive treatment of such victims. Avoiding re-victimization of the victim is crucial to the well-being of those individuals. Additionally, reference (a) expressly prohibits releasing the name of any sexual assault victim to the media without the consent of the victim [see enclosure 2, ¶ 2.b].

**VICTIM ADVOCATES:** The Marine Corps has victim advocates available at every installation through the Marine Corps Family Services activity, formerly the Family Support Center [see reference (b), enclosure 1, ¶¶ 10-11]. Victim advocates possess specialized training in assisting victims of sexual assault. Commanders should be receptive to recommendations made by victim advocates on behalf of victims. Victim advocates may recommend that a military protective order be issued, that the victim reside in a "safehouse" for a short period of time, or that the victim requires a level of assistance beyond their capability, requiring a commander's authorization.

**SUSPECTS—QUESTIONING/INTERROGATION/ARTICLE 31(b)**

- REFERENCES:** (a) Manual for Courts-Martial, MRE 301-305  
(b) UCMJ, Article 31(b)  
(c) MILPERSMAN 1620-010  
(d) JAGMAN Appendix A-1-e  
(e) JAGMAN Appendix A-1-m

**MAJOR CRIMINAL OFFENSES:** DO NOT allow anyone from your command to interrogate the member before referring the case to NCIS.

**ALWAYS READ RIGHTS** when (1) you suspect a member of committing an offense and (2) you are going to ask the member a question relating to the offense (e.g., asking questions or making statements that are likely to evoke an incriminating response).

**WHICH RIGHTS EXACTLY?**

- A service member is entitled to be informed of Article 31(b) and Miranda rights when you suspect the member has violated the UCMJ and are going to question that member about the offense.
- Use the rights warning form at JAGMAN A-1-m. Article 31(b) and Miranda are reflected on the rights warning form and should always be read before any interrogation. Rights 1-3 listed on the Rights Warning form are Article 31(b) rights [what suspected of and right to remain silent]; rights 2-6 on the form are Miranda rights [right to remain silent and right to a lawyer]. Do not ask the suspect any questions unless *both* the right to remain silent and the right to a lawyer are waived.
- Waiver of rights must be knowing, voluntary, and intelligent. Make sure suspect understands his/her rights and the consequences of his/her waiver.
- If the suspect wants to remain silent or asks for a lawyer, you MUST NOT ask any more questions.

**PRIOR QUESTIONING WITHOUT RIGHTS WARNING:** Provide "cleansing warning" if someone has previously questioned the member and did not provide rights warnings. (1) Advise the member that the prior statement cannot be used against him/her and that (2) even though he/she made the earlier statement, he/she can still choose to remain silent or request a lawyer. Then (3) fully advise the member of his/her rights using JAGMAN A-1-m and determine whether the member will waive his/her rights.

**NEW OFFENSES:** If during any conversation or questioning, you begin to suspect the member of a new or different offense, you must stop the questioning immediately and complete a new rights warning form (JAGMAN A-1-m) with the new or different offense or offenses listed.

**ARTICLE 31(b) & NJP:** At mast/office hours, only Article 31(b) is read. Sailors always have the right to remain silent but do not have a right to an attorney at NJP. However, if it is reasonably foreseeable that an accused will make an admission or actually does make an admission that warrants court-martial punishment, the CO should provide a full reading of rights and waiver (Art. 31(b) and Miranda; see JAGMAN, Appendix A-1-m) to protect the admissibility of such confessions in court. That said, full rights warnings must be given at all other stages in the process (e.g., prior to any questioning by a supervisor, investigating officer, law enforcement officer, Chief's Discipline Review Board, or XOI).

**DRUNKEN SAILOR:** A member must be in a condition to knowingly, intelligently, and voluntarily waive his/her rights. Don't try to interrogate a drunken sailor!

**FALSE PROMISES OR THREATS:** A confession must be voluntary. Don't use threats or false promises.

**PROMISE OF LENIENCY:** Only General Court-Martial Convening Authorities (Flag officers) have the authority to grant immunity or leniency for testifying. Do not promise a member that you won't use what he says against him or that he won't be prosecuted.

## SEARCH & SEIZURE

- REFERENCES:** (a) Manual for Courts-Martial, Military Rules of Evidence 311-316  
(b) MILPERSMAN 1620-010  
(c) SECNAVINST 5520.3 (series)  
(d) JAGMAN Appendix A-l-n  
(e) JAGMAN Appendix A-l-o

**CO/OIC AUTHORIZING A SEARCH MUST BE NEUTRAL AND DETACHED:** If CO/OIC was the victim of an offense or has become involved in the investigation, refer any search authorization request to a superior in the chain of command.

**NON-DELEGABLE AUTHORITY:** Only the CO/OIC can issue a search authorization. CO/OIC must personally make the probable cause determination; the CDO cannot act for CO/OIC.

**MAJOR CRIMINAL OFFENSES:** Per reference (c), DO NOT conduct a search before referring the case to NCIS unless the search is necessary to protect life or property or to prevent the destruction of evidence.

### SEARCH AUTHORIZATIONS MUST BE BASED ON PROBABLE CAUSE:

- A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched.
- The reasonable belief must be supported by a factual basis and information must be reliable and credible.

### JURISDICTION:

- **PERSON (ON/OFF BASE):** With probable cause, a CO/OIC can authorize the search of persons under his command. Per reference (b), searches shall be, whenever possible, conducted by or in the presence of a servicemember of the same sex.
- **ON-BASE PROPERTY:** With probable cause, a CO/OIC can authorize the search or seizure of property under his immediate control.

- **OFF-BASE PROPERTY IN U.S.:** CO/OIC may not authorize a search of off-base property in the United States. The CO/OIC must work through NCIS to obtain civilian authority to conduct an off-base search.
- **OFF-BASE PROPERTY OUTSIDE U.S.:** CO/OIC with probable cause may authorize searches of military members' property. Note that some Status of Forces Agreements (SOFA's) limit or prohibit such off-base searches.

**QUEST FOR EVIDENCE:** If looking (searching) for evidence, DO NOT order or conduct a "health and readiness inspection" in the area where the evidence may be located.

- Courts may throw out evidence seized in a search disguised as an inspection. Factors the courts will consider to evaluate whether an inspection is really an illegal search are (1) if the inspection was not previously scheduled; and it followed the report of an offense; (2) if it targeted specific individuals; or (3) if it subjected specific individuals to a greater degree of scrutiny than others.

**COMMON AREAS:** May be searched anytime without a search authorization. Drug dogs may be used in passageways, workspaces, or common areas at any time. Drug dog alert from within a common area may establish probable cause to order a search of private property (but CO/OIC must still make the decision whether probable cause exists and whether to issue the authorization).

**USE OF FORMS:** Search authorization forms are found at JAGMAN A-1-n. Anyone providing information to support the request to search should be sworn and under oath. See *APPENDIX B: CO Search Authorization Checklist*.

**SPECIFICITY ON THE FORM:** When authorizing a search, the CO/OIC must describe the place to be searched and the items to be seized. The list of items to be seized should include every item of evidence that may be expected to be found and any parts/pieces/components thereof.

**ALWAYS ASK FOR CONSENT:** Before actually conducting a search, the owner of the property should be asked for consent to search. Document consent in writing (see JAGMAN A-1-o). Consent must be voluntarily obtained to be valid. Consent can be limited or withdrawn at any time. Limitation or withdrawal of consent cannot serve as a basis for probable cause.

## SEARCH & SEIZURE – DRUG CASES

- REFERENCES:** (a) OPNAVINST 5350.4 (series)  
(b) MCO P1700.24 (series)  
(c) SECNAVINST 5300.28 (series)  
(d) Manual for Courts-Martial, Military Rules of Evidence 313-316  
(e) MCO 1000.10 (series)  
(f) MILPERSMAN 1910-146  
(g) MILPERSMAN 1620-010  
(h) MCO P1900.16 (series) (MARCORSEPMAN) 6210

**INSPECTIONS:** Commanders may order urinalysis inspections to determine and ensure the security, military fitness, safety, and good order and discipline of the command. Members may be selected randomly or commanders may conduct unit or sub-unit sweeps. Results of inspections that follow reports of drug use by individuals within the command (which were not previously scheduled) and/or inspections that target specific individuals may be suppressed at a court-martial. Per reference (a), NCIS should be consulted upon reports of drug use by members in the command.

- **24 HOUR UA & SUB-UNIT TESTING:** Commands may establish policies to test all members returning from UA periods longer than 24 hours as a sub-unit sweep. The policy should be in writing and enforced equally and consistently to all members returning from 24 + hour UAs.

**REPORT OR SUSPICION OF DRUG USE OR POSSESSION & PROBABLE CAUSE SEARCHES:** Evidence obtained through probable cause searches will be admissible in disciplinary actions and may be used to characterize discharge. Must have reliable and credible information to establish probable cause. See *SEARCH & SEIZURE* and *APPENDIX B: CO PROBABLE CAUSE CHECKLIST*.

- **ALWAYS ASK FOR CONSENT TO SEARCH:** Prior to conducting any search or ordering a member to provide a urine sample, the member should be asked to consent and the consent should be obtained in writing. Member should be advised that he/she may refuse and informed why a sample is being requested. There is no need to provide 31(b) warnings. Valid consent will negate subsequent challenge that the sample was seized illegally. See JAGMAN Appendix A-1-o.

- **OBSERVATION:** If you suspect a member is under the influence of a drug or alcohol, have medical or trained observers evaluate the member and opine whether the behavior indicates intoxication. Observation alone may establish probable cause. If probable cause does not exist, a commander may still order a "Fitness for Duty", but results will be inadmissible for disciplinary action and cannot be used to characterize an administrative discharge. **Navy only:** positive drug results from a Fitness for Duty/Command Directed urinalysis can only be used for administrative discharge if results were determined from one of the three NAVDRULAB or any DoD approved lab. See Fitness for Duty Tests below & APPENDIX I: Use of Positive Urinalysis.

- **STALE COMPLAINTS:** If alleged use occurred several days before report, the information may be stale and therefore would not support a probable cause determination. Consent urinalysis may still be requested. However, keep in mind the windows for detection:

▪ Marijuana	3-5 days (5+ days, if frequent user)
▪ Amphetamines	72 hours
▪ Methamphetamine	72 hours
▪ Morphine/Codeine	48 hours
▪ Heroine	24 hours
▪ LSD	12-24 hours
▪ Ecstasy	24-72 hours

- **FITNESS FOR DUTY TESTS:** May not be used for disciplinary purposes or to characterize a member's administrative discharge. Includes command directed tests or competency for duty tests (ordered whenever a member's behavior, conduct, or involvement in an accident gives rise to suspicion of drug abuse and a urinalysis test has not been conducted on a consensual or probable cause basis), and safety/mishap investigation tests. See APPENDIX I.

- **DISCIPLINE & ADMINISTRATIVE DISCHARGE:**

- **Limits:** As mentioned above, fitness-for-duty and command-directed tests cannot be used to characterize a member's discharge. In addition, no disciplinary action may be taken against a member who was command directed (fitness-for-duty or competency-for-duty test) to submit to a urinalysis.
- **Prohibits discharge:** USN only: Samples tested at facilities other than DOD-certified labs or one of the three Navy Drug Labs cannot be used as evidence at an administrative discharge board. See references (a), (f).

- **Best Course:** In order to preserve the CO's full range of disciplinary and administrative options, commands should seek consent or obtain search authorization and then use the command urinalysis coordinator and observer to collect, record, and ensure chain of custody of the sample to a Navy Drug Screening Lab.

**DRUG PARAPHERNALIA:** References (a) and (f) prohibit the wrongful possession of drug abuse paraphernalia, which is defined as "all equipment, products, and materials of any kind that are used, intended for use or designed for use in injecting, ingesting, inhaling, or otherwise introducing into the body drugs, chemicals or other controlled substances in violation of the law." Enclosure (1) to reference (b) has a non-exclusive list. Paraphernalia found in plain view or discovered during authorized searches or inspections, may be seized.

## **COURTS-MARTIAL: TYPES & CONVENING**

- REFERENCES:** (a) Manual for Courts-Martial,  
RCM 501-504, 704, 1003, 1107, 1301-1306  
(b) UCMJ Arts 16, 22-25  
(c) JAGMAN Chapter I

### **TYPES OF COURT-MARTIAL:** **SUMMARY COURT-MARTIAL (SCM):**

- Commanding Officers and OICs have authority to convene SCMs. The CO or OIC is referred to as the convening authority (CA).
- SCMs cannot try officers.
- All enlisted (sea and shore) have absolute right to refuse trial by SCM.
- CA appoints one officer as the SCM Officer who serves as the Military Judge (MJ), Trial Counsel (TC), Defense Counsel (DC) all rolled into one.
- The accused has no right to military counsel, but he may be represented by military counsel (at no expense to the accused) if one is detailed to the case. The accused also has the right to retain civilian counsel at his own expense if civilian representation will not unreasonably delay the proceedings.
- Punishment at SCM is limited. See APPENDIX C.
- CA takes action on the findings & punishment awarded by the SCM Officer after 7 days.

### **SPECIAL COURT-MARTIAL (SPCM):**

- Commanding Officers may convene.
- Full criminal trial for officer and enlisted. MJ, at least 3 members, TC, DC (DC may include detailed counsel, IMC, and/or civilian counsel).
- See APPENDIX C for punishments.
- CA approves any pre-trial agreement.
- CA takes action on findings & sentence after clemency period has expired.

### **GENERAL COURT-MARTIAL (GCM):**

- Article 32 investigation required. Any CA may order an Art 32.
- Only flag officers (and a very few specially designated COs) may convene a GCM. (See reference (c), § 0120).
- GCMs involve a military judge, at least 5 members, TC, and DC (DC may include detailed counsel, IMC, and/or civilian counsel).
- GCMs have authority to issue maximum punishment listed for any UCMJ offense.
- GCMCA approves pretrial agreement.
- GCMCA takes action on findings and sentence after clemency period has expired.

**MECHANICS OF CONVENING COURTS-MARTIAL:** Court created by Convening Order. Convening Order must be created prior to CA signing the charge sheet referring the charges to court-martial.

- Contents of Convening Order
  - Date
  - Convening Order number
  - Authority to convene (on letterhead)
  - Type of court
  - Names of members
  - Personal signature of CA
- Selection of Members:
  - "Members shall be persons who, in the opinion of the CA, are the best qualified by reason of their age, education, training, experience, length of service, and judicial temperament."
  - Members must be senior to the accused, unless unavoidable.
  - The accused is entitled to a fair and impartial panel. Members with personal knowledge of the charges will likely be disqualified.
  - Do not attempt to "stack" the jury.
  - Enlisted members are detailed only if an enlisted accused requests enlisted members. In such a case, absent military exigency, 1/3 of the final panel must be enlisted and the members must come from a unit other than the accused's unit.
- CO's Signature: Required on:
  - Convening Order
  - Charge sheet referral block.

NOTE: Be absolutely sure both a Convening Order and the Preferral block of the charge sheet (block 11) have been signed and dated prior to referring charges to Court-Martial.

## COURTS-MARTIAL: BASICS

- REFERENCES:** (a) Manual for Courts-Martial,  
RCM 104, 504  
(b) UCMJ Arts 13, 22(b), 23(b), 37  
(c) JAGMAN 0129

**JUDICIOUS AND FAIR:** Congress has entrusted Commanding Officers with responsibility to administer discipline. COs should be vigilant to ensure all actions are consistent with the UCMJ.

**INFORMED DECISIONS:** Ensure that independent investigations are convened to disclose reliable facts.

### ACCUSER CONCEPT:

- For a special or general court-martial, the CA may not:
  - (1) Sign the accuser block on a charge sheet;
  - (2) Direct that someone else sign the accuser block on a charge sheet; or
  - (3) Have a personal interest in the case (e.g., as victim or witness).
- If such a situation exists, the CA must forward the case to a superior.

### AREAS OF UNLAWFUL COMMAND INFLUENCE TO AVOID:

- **PUBLIC OPINIONS:** Do not express public opinions on innocence or guilt or appropriate punishment for crimes in general or for individual accused.
- **UNLAWFUL INFLUENCE:** Do not order a subordinate commander to dispose of a case in a particular way. Each commander must be allowed to exercise independent judgment.
- **INFLEXIBLE POLICY:** Do not have an inflexible policy on disposition or punishment. Each case and each punishment must be decided based on its particular facts.
- **INFLUENCE REGARDING RESULT:** Do not censure, reprimand, or admonish the court or any member, military judge, or counsel with respect to findings or sentence adjudged.
- **INFLUENCE ON MEMBERS:** Do not select or remove court members in order to obtain a particular result.
- **INFLUENCE ON MILITARY JUDGE:** Do not attempt or even appear to put pressure on a military judge or court members to obtain a particular result.
- **INFLUENCE ON WITNESSES:** Witnesses may not be intimidated or discouraged from testifying. If a witness testifies (truthfully) on behalf of an accused, no retribution should be taken against him.

**PRETRIAL PUNISHMENTS:** Courts decide the punishment. An accused may not be punished before trial. Do not use pretrial restraint as a method to punish before conviction.

**THE STANDARD:** "Would the average American citizen lose faith in the military justice system or consider it unfair?" Ensure that an accused member receives all the protection provided under the UCMJ.

## **COURTS-MARTIAL: PRETRIAL RESTRAINT (PTR)**

**REFERENCES:** (a) Manual for Courts-Martial,  
RCM 304, 305  
(b) UCMJ Arts 10, 13  
(c) JAGMAN 0127

**4 TYPES OF PRE-TRIAL RESTRAINTS (PTR)** (from least severe to most severe):

- Conditions on liberty (e.g. orders to report periodically to specified officials; orders not to go to certain places or to associate with certain people such as the victim)
- Restriction
- Arrest
- Pretrial Confinement (PTC)

### **AUTHORITY TO ORDER PTR:**

- WHO:
  - Only the CO may order **PTR** of an officer.
  - Any commissioned officer may order **PTR** of an enlisted person. CO may delegate the authority to order pretrial restraint of CO's own enlisted persons to warrant, petty, and noncommissioned officers.
- WHEN:
  - PTR is appropriate when there is a reasonable belief that:
    - A court-martial level offense has been committed;
    - The restraint ordered is required by the circumstances.
    - The person to be restrained committed it; and
    - Additionally, pre-trial confinement (PTC), requires probable cause to believe:
      - The prisoner will not appear at trial; or
      - The prisoner will engage in future serious misconduct; and
      - Less severe forms of restraint are inadequate.
    - PTR decisions must be made on a case-by-case basis. The least severe form of PTR necessary under the circumstances should be used. PTR may not be used for offenses that will be handled at NJP. PTR is appropriate only when the command intends to try the accused by general or special court-martial.

- **PUNISHMENT BEFORE TRIAL IS PROHIBITED:** PTR may be used only to ensure presence of the accused at trial or to prevent future serious misconduct or both.
- **PTR (EXCLUDING CONDITIONS ON LIBERTY) STARTS SPEEDY TRIAL PROVISIONS:** Immediately notify the trial counsel (RLSO/LSSS) when a member is placed in PTR.
- **SUICIDAL OR INTOXICATED PRISONERS:** PTC is not appropriate and brigs will not accept such prisoners.

**DOCUMENTING CO's APPROVAL OF PTC:** When PTC is imposed, the CO must be notified and approve the PTC within 24 hours. A written memorandum ("48-hour letter") explaining why PTC is warranted must be prepared and signed by the CO within 48 hours and forwarded to the brig. If the CO is not "neutral and detached," an officer who is neutral and detached must make a probable-cause decision to continue PTC within 48 hours.

**COMMAND REPRESENTATIVE AT PTC HEARING:** Within 7 days of confinement, an independent review officer (IRO) appointed by the area coordinator will conduct a hearing to review the reasons for continued confinement. The command shall send a representative to the hearing at the brig.

**COMMAND VISITS:** Prisoners in PTC should receive a weekly command visit.

## ***PRETRIAL AGREEMENTS***

**REFERENCES:** (a) Manual for Courts-Martial, RCM 705  
(b) JAGMAN 0137

**NEED FOR PRETRIAL AGREEMENTS (PTA):** PTAs serve both the government and the accused. In exchange for a plea of guilty and a limit on the authorized punishment, the government is often spared the expense (both monetary and time) of lengthy trials (commands must fund a trial with Operation and Maintenance Funds and witnesses and members are often unavailable to the command for days).

**CAs APPROVE ALL PTAs:** PTAs are not entered into without the express consent of the CA. Trial counsel (prosecutors) may make recommendations, but only CAs may approve.

### **SCOPE OF A PRETRIAL AGREEMENT (PTA):**

Accused may agree to:

- Plead guilty.
- Waive article 32 hearing.
- Waive members (i.e., to be tried by military judge alone).
- Waive government funding of sentencing witnesses.
- Be tried no later than a specific date.
- Stipulate to facts or testimony.
- Make restitution to a victim.
- Testify against others.
- Conform behavior to conditions of probation.
- Waive right to an administrative separation hearing after trial.
- Lower forum of court-martial.

CA may agree to:

- Protect accused on adjudged sentence provisions.
- Drop, reduce, or not proceed with certain charges.
- Protect accused from potential automatic sentence provisions.

**NEGOTIATION PROCEDURES:** Negotiations may originate with accused, DC, TC, SJA, or CA. Proposals must be forwarded to the CA.

- Counteroffers are permissible.
- The final agreement must be in writing.
- The PTA must contain all aspects of agreement. Under-the-table agreements may render the written agreement invalid.

- Authority to sign may be delegated by CA (often to the TC).

**WITHDRAWAL FROM THE PTA:**

By the CA:

The CA may withdraw:

- any time before performance by the accused begins;
- if accused fails to fulfill a material term of the PTA;
- if MJ finds disagreement as to a material term; or
- if findings are set aside by court of appeals.

By the accused: The accused may withdraw at any time, but after findings (guilty/not guilty) are announced by the court, the accused may withdraw only with permission of the MJ.

## COURTS-MARTIAL: POST-TRIAL REVIEW

**REFERENCES:** (a) RCM 1101, 1103, 1104, 1105, 1106, 1107, 1113  
(b) UCMJ, Arts. 57, 58, 58a, 58b, 60  
(c) JAGMAN 0151, 0152

**CA ACTION:** Review of the court-martial by the Convening Authority after the trial is a crucial but often neglected step in the court-martial process that may cause serious consequences.

**EFFECTIVE DATE OF ADJUDGED PUNISHMENTS:** Most punishments do not take effect until the CA takes action. Exceptions are confinement, which starts immediately, and forfeiture of pay and reduction in pay grade, which start 14 days after trial. [See reference (c)]. Other punishments (e.g. restriction, hard labor without confinement) will not go into effect until CA acts. Dismissal, DD and BCD will not take effect until appellate review is complete.

**AUTOMATIC PUNISHMENTS:** In addition to adjudged punishments, there are two types of automatic (statutory) punishments which go into effect for certain types of cases:

- **AUTOMATIC REDUCTION:** When an enlisted member's court-martial sentence, as approved by the CA, includes: (1) a discharge or (2) more than 90 days confinement, the member will automatically be reduced to the paygrade of E-1 upon the date of the CA's action.
- **CA's OPTIONS:** The CA can suspend, remit (cancel), modify (approve reduction to a lower paygrade but not all the way down to E-1), or allow this automatic reduction to occur.
- **AUTOMATIC FORFEITURE:** When any member's court-martial sentence includes: (1) confinement for more than 6 months or death, or (2) a discharge plus any amount of confinement, the member will automatically forfeit 2/3 pay (in the case of a SPCM) or all pay and allowances (in the case of a GCM) starting at the earlier of CA's action or 14 days after the sentence is adjudged. The automatic forfeiture will be taken throughout the period of confinement and parole.
- **CA's OPTIONS:** The CA can defer automatic forfeiture until CA's action. (This means the automatic forfeiture of pay will not take effect, as it normally would, 14 days after the trial. Deferment changes the effective date to the date of the CA's action.) At action, the CA can approve the automatic forfeiture; alternatively, the CA may waive the forfeiture for a maximum of 6 months in favor of the accused's dependents. Usually the accused sets up an allotment for a dependent in the amount of the automatic forfeiture.

**WHEN CA MAY TAKE ACTION:** Before the CA's action, the record of trial must be prepared by the RLSO or LSSS, authenticated by the TC and MJ, and served on the accused and his/her DC. For all GCMs that result in a finding of guilty and any cases involving a punitive discharge, an SJA or Legal Officer Review must be prepared by the command and served on the accused and his or her DC. Finally, the accused must be given the opportunity to seek clemency from the CA. An accused seeks clemency by "submitting matters" (such as letters from family members, friends, command members, or even the victim or members of the court-martial) that explain to the CA why he should approve a lower sentence than sentence adjudged at trial.

**ATTENTION TO DETAIL:** CA's action letters must include specific information about the accused and must accurately reflect information about the trial. Use of the standard language and forms in the MCM and JAGMAN is crucial.

#### FINDINGS OF THE COURT:

- CA not required to take any action on findings.
- Options:
  - The CA may approve or disapprove of the court's findings.
  - The CA may disapprove a finding of *guilty* on an original charge but approve a finding of guilty for a lesser included offense.
  - The CA may NOT change a finding of *not guilty* to a finding of *guilty*; however, a *guilty* may be changed to *not guilty*.

If the CA says nothing about the findings, it is presumed that he approves the findings of the court-martial.

#### SENTENCE OF THE COURT:

- CA must take action on the sentence.
  - Options:
    - The CA may **approve** any punishment as adjudged by the court-martial.

The CA may **disapprove** any punishment (except automatic forfeiture of pay, which may only be deferred and then waived for six months).

The CA may **suspend** a punishment for a "reasonable" amount of time, usually six or twelve months from the date of trial or the date of the CA's action letter.

The CA may **mitigate** a punishment; mitigation reduces an adjudged punishment to a lesser amount (e.g., 90 days to 60 days) or to a lesser kind (e.g., confinement to restriction).

The CA may **defer** punishments. This occurs *before* the official CA's action. For punishments that are supposed to take effect before the CA's action, the CA may delay the effective date of the punishment for a period of time. Usually deferment of punishment ends on the date of the CA's action.

## VICTIM/WITNESS ISSUES

- REFERENCES:** (a) DoD Dir. 1030.1  
(b) SECNAVINST 5800.11 (series)  
(c) OPNAVINST 5800.7 (series)  
(d) SECNAVINST 1752.4 (series)  
(e) OPNAVINST 1752.1 (series)  
(f) NAVADMIN 128/05  
(g) MCO P5800.16 (series) [LEGADMINMAN, Chapter 6]  
(h) MCO P1700.24 (series)  
(i) MCO 1752.5 (series)  
(j) DoD Inst. 1342.24

### APPOINT A COMMAND VICTIM & WITNESS ASSISTANCE COORDINATOR:

A responsible individual should be appointed in writing to coordinate victims'/witnesses' issues and to act as a Data Collection Coordinator.

**BASIC REQUIREMENTS:** Upon notification of incident wherein a victim or witness of a crime is identified, ensure that rights advisements are made using form DD2701 (see also reference (d), enclosure 1].

- Victim: A person who has suffered direct physical, emotional, pecuniary harm as a result of the commission of a crime.
- Witness: A person who has information or evidence about a crime within the investigative jurisdiction of the DON, and who provides that knowledge to a DON representative.

**COUNSELING AND TREATMENT:** Victims of sexual assault and rape should receive immediate treatment and counseling [see references (a) and (c)].

**PREVENT REPRISAL:** Protect victims and witnesses. Remove the alleged perpetrator from workspace if necessary. For alleged military perpetrator consider necessity of issuing a Military Protective Order (MPO). See *FAMILY ADVOCACY / DOMESTIC VIOLENCE* and *PRETRIAL RESTRAINT*. An MPO may be issued in situations other than family violence (e.g., boyfriend/girlfriend disputes). Consider TAD transfer of alleged perpetrator or victim. If victim is military or military dependent refer to Legal Assistance attorney for advice on civilian protective order. If alleged perpetrator is civilian consider debarment from the base.

**MENTAL HEALTH EVALUATIONS:**

**PSYCHIATRIC EVALUATION:** Do not refer a victim (complainant) or witness for a mental health evaluation unless it is done in compliance with the Mental Health Evaluation Instruction.

**FOLLOW UP INFORMATION:** Provide information and assistance to victims and witnesses at all stages. Victims and witnesses should be informed regarding apprehension of accused (or changes in confinee status); investigation status; decisions not to prosecute; preferral and referral of charges; conviction, sentencing and final resolution of the charges against the accused [see references (a), (b), (c), and (g)].

**POTENTIAL INCIDENT REPORTING REQUIREMENTS:**

- OPREP-3 for major incidents, and SITREPS formatted IAW reference (e), ¶ 14 (information from NAVPERS 1752/1).
- Major criminal offenses to NCIS. See *NCIS INCIDENT REPORTING*.
- Violent crime message. See *VIOLENT CRIME REPORTING*.
- For incidents involving sexual assaults, immediately notify your SAVI representative, NCIS, and your SJA.
- Incidents involving sexual harassment. See *SEXUAL HARASSMENT*.
- Incidents involving officers IAW with TYCOM/Second Echelon requirements. See *OFFICER MISCONDUCT*.

**ADDITIONAL REPORTING REQUIREMENT FOR SEXUAL ASSAULT INCIDENTS (SAVI):** In addition to requirements listed above, commands must report to Echelon 2 commanders within 24 hours of receiving a report of incident and submit follow-up reports at least monthly until resolution [see reference (e), ¶ 14].

- Sexual assault includes rape, forcible sodomy, assault with intent to commit rape or sodomy, and indecent assault.
- Must report assaults occurring in areas of Navy control regardless of victims or perpetrator's duty status, military affiliation, or nationality.
- Must report incidents involving victims who are family members and victims and alleged perpetrators who are active duty naval service members or another service assigned to a naval command regardless of location of incident.
- Incidents involving sexual assault victims who are under age 18 or married to the perpetrator should be reported through the family advocacy program. See *DOMESTIC VIOLENCE/FAMILY ADVOCACY INCIDENTS*.

**USMC: ADDITIONAL REQUIREMENTS FOR RESPONDING TO SEXUAL ASSAULT INCIDENTS:** Reference (g) details a commander's responsibilities. Generally, commanders must ensure sexual assault victims are treated fairly, with sensitivity, that information related to the victim is handled in a confidential manner, that the victim has access to necessary services, and that the victim is provided monthly updates on the status of their case. Consult with your SJA and victim advocate.

**SUPPORT AND PUBLICIZE THE SEXUAL ASSAULT VICTIM INTERVENTION (SAVI) PROGRAM:** Establish an atmosphere of zero tolerance of sexual assault and rape [see reference (d)].

**TRANSITIONAL COMPENSATION.** Family members who were abused by a servicemember who is subsequently separated for that abuse, either by court-martial or administrative separation, are entitled to transitional compensation [see reference (j)]. Transitional compensation is not based on the financial needs of the family. The program provides monthly payments of transitional compensation and other benefits (medical, dental, etc.) to the family members providing that the members do not cohabit with the abusive member. Your local Family Service Center/Marine and Family Services personnel can assist in the application process.

## **Section II: NONJUDICIAL PUNISHMENT**

### **ADMINISTRATIVE & DISCIPLINARY OPTIONS**

- REFERENCES:** (a) RCM 306  
(b) SECNAVINST 1920.6; 5510.30 (series)  
(c) JAGMAN 0102-0105  
(d) OPNAVINST 3120.32; 5510.100 (series)  
(e) BUPERSINST 1430.16; 1610.10  
(f) MILPERSMAN 1611-020; 1616-010; 1910  
(g) MCO P1610.7 (series)

**APPROPRIATE ACTION IN EVERY CASE:** "The disposition decision is one of the most important and difficult decisions facing a commander." The discussion to RCM 306 lists 10 factors that the commander should consider (e.g., character of the accused's military service; nature of the incident; victim and witness availability, etc.). Prompt action is always essential.

**NO ACTION OR DISMISSAL:** Upon completion of an investigation a commander may decide to take no action on an offense. If charges have been preferred, they may be dismissed.

**ADMINISTRATIVE ACTION:** May be taken in addition to or instead of disciplinary action as circumstances warrant.

- Informal resolution of minor sexual harassment incidents or very minor misconduct.
- Nonpunitive measures - leadership tool to correct unacceptable behavior. JAGMAN 0102
  - Nonpunitive Censure. JAGMAN 0105
  - Extra Military Instruction (EMI). JAGMAN 0103; OPNAVINST 3120.32
- Denial of Privileges. JAGMAN 0104
  - Letter of Instruction (LOI). MILPERSMAN 1611-020/1616010
- FITREP and EVALS. BUPERSINST 1610.10; MCO P1610.7
- Security clearance adjustment or withdrawal. OPNAVINST 5510.100; SECNAVINST 5510.30 (series)
- Withhold or withdraw advancement/promotion recommendation. BUPERSINST 1430.16 (series)
- Reassignment/early transfer/delay of transfer.
- Detachment for Cause (DFC). MILPERSMAN 1611-020, 1616-010

- Administrative Separation/Board of Inquiry. MILPERSMAN 1910/SECNAVINST 1920.6 (series)

## **DISCIPLINARY ACTION:**

- Nonjudicial Punishment (NJP)
  - Summary Court-Martial (SCM)
  - Special Court-Martial (SPCM)
  - General Court-Martial (GCM)

## ***VIOLENT CRIME REPORTING (VCR)***

**REFERENCES:** (a) GENADMIN/CINCLANTFL *T/081600Z AUG 95*  
(b) GENADMIN/CINCPACFL *T/021721Z APR 95*  
(c) OPNAVINST 3100.6 (series)

**MANDATORY MESSAGE REPORT:** Whenever a command's military or civilian personnel (on or off base) are involved as either the suspect or victim of violent crime.

**DEFINITION OF "VIOLENT CRIME":** Murders, rapes, robberies, aggravated assaults, simple assaults, sexual assaults, child abuse, spouse abuse. ANY VIOLENCE THAT COMES TO THE ATTENTION OF THE COMMAND OR BASE POLICE.

**DISTINGUISH FROM OPREP/SITREP:** Requirement to report violent crimes is separate from the requirement to submit OPREP/SITREP pursuant to reference (c). However, if a OPREP/SITREP will be submitted, the information necessary to meet the Violent Crime reporting requirement may be included in the remarks section of the OPREP/SITREP.

**WHEN OPREP/SITREP IS NOT SUBMITTED:** The report should be submitted via message to the fleet commander with info addressees including TYCOM, regional commanders and others in the chain of command as necessary.

**MESSAGE SUBMISSION RESPONSIBILITIES:** The parent command of the victim/suspect is responsible for sending the report.

**MESSAGE FORMAT:** See reference (a) and (b).

**REPORTING SEXUAL ASSAULTS (SAVI):** See *VICTIM/WITNESS ISSUES*.

## ***NONPUNITIVE MEASURES***

**REFERENCES:** (a) JAGMAN 0102, 0103, 0104, 0105  
 (b) OPNAVINST 3120.32, Section 142

**PURPOSE:** Correct minor infractions and deficiencies without any permanent record.

**FUNCTION:** A leadership tool for teaching and training instead of punishment.

**NONPUNITIVE CENSURE (JAGMAN 0105):** Two types:

- Oral: Chewing out
- Written: "Nonpunitive Letter of Caution" Limitations: Private (one copy). Not mentioned in evals/fitreps. (Underlying misconduct may be mentioned)

**EXTRA MILITARY INSTRUCTION (EMI) (JAGMAN 0103)** Command obligation to have policy and ensure EMI not abused.

### **EMI ANALYSIS:**

- Identify the deficiency. Assign corrective instruction logically related to deficiency. Recommend order be given in writing.

### **WHO MAY ASSIGN EMI?**

- EMI completed during working hours – Not limited to any rank. Ordinarily Officers/Petty Officers.
- EMI completed after working hours – CO or OIC only, but CO/OIC may delegate to officers and petty officers.

### **LIMITATIONS ON EMI:**

- Two hours maximum per day
- Not on Sabbath
- Reasonable number of days
- Normal liberty upon completion
- No entry in service record

**ADMINISTRATIVE WITHHOLDING OF PRIVILEGES (JAGMAN 0104).**

**Those with the power to grant a privilege may also revoke that privilege. Only privileges, and not rights, may be withheld.**

- Privilege: A benefit for the member's enjoyment (e.g., special liberty, driving on base, civilian clothing, exchange of duty, use of base theater/club.)

**LAWFUL WAYS TO DENY NORMAL LIBERTY:**

- Right: Part of compensation or required for the performance of duties (e.g., medical care, dental care, quarters, subsistence, pay, normal liberty).
- EMI
- Liberty risk
- Extension of working hours for mission requirements
- Limited health/safety reasons (i.e., drunk watch, immunization, and family advocacy 72-hour cooling-off period)
- Punishment awarded at NJP or courts-martial.
- Pretrial restraint for courts-martial

**“VOLUNTARY RESTRAINT” (HACQ):** “House Arrest, Confinement to Quarters”, or HACQ, is not authorized.

**REMEDIES FOR ILLEGAL NONPUNITIVE MEASURES:**

- Request mast. Article 138 (UCMJ) complaint against CO.
- Article 1150 (NAVREGS) complaint against superior.
- Congressional inquiry/Hotline complaint.

## NJP JURISDICTION

- REFERENCES:** (a) UCMJ, Article 15  
(b) MCM, Part V  
(c) JAGMAN 0106, 0107, 0108

**CO's AUTHORITY NON-DELEGABLE:** Authority to impose NJP is normally *not* delegable (exception for Flag Officers who may designate a principal assistant (JAGMAN 0106)). CO has authority over all Navy/Marine members of his/her command.

Jurisdiction determined by:

- Member of command at the time NJP is imposed, *not* at the time of the offense.
- *TAD Personnel:* Either PCS or TAD CO can impose NJP, but not both.
- *Embarked units:* Unit commanders defer to the CO of the ship, except, generally unit commander retains NJP authority over units embarked for transportation only.
- *Multi-service command:* Navy/Marine personnel are subject to NJP from multi-service commander.

**OFFENSES PUNISHABLE:** CO has broad discretion to decide what offenses should be handled at NJP.

- **GENERAL GUIDANCE:** NJP is for “minor” offenses. An offense is “minor” if a dishonorable discharge (DD) or more than one year’s confinement is *not* authorized.
- **“DOUBLE PUNISHMENT”:** Punishment of a minor offense at NJP will bar a subsequent court-martial for the same offense. Punishment of a major offense at NJP will not bar a subsequent court-martial for the same offense, but the accused will receive credit for NJP against any ultimate court-martial sentence. The military judge (MJ) will decide if the offense is major or minor.

**PRIOR CIVILIAN ACTION (JAGMAN 0124):** Prior federal court action bars NJP or court-martial. Prior State/local/foreign court action does not bar NJP or court-martial, but the command must request permission to proceed from the GCMCA, who must report to OJAG (Code 20) or the Commandant of the Marine Corps (JAM) if permission is granted.

- Criteria – exceptionally light sentence, impracticable probation, court concludes without conviction or acquittal after trial on the merits, unique military interest.

**DUAL ACTION:** If both the Navy and a civilian law enforcement agency have jurisdiction over an offense, prosecution efforts should be coordinated. Senior Officer Present Afloat and the area coordinator SJA, as well as NCIS, should be consulted if it appears that both the Navy and local authorities are contemplating prosecution.

**STATUTE OF LIMITATIONS:** Two years from date of offense.

**NJP – PRE-MAST & MAST PROCEEDINGS**

- REFERENCES:** (a) UCMJ, Article 15  
 (b) MCM, Part V  
 (c) JAGMAN 0109-0115  
 (d) MCO P5800.16 (series)  
 (LEGADMINMAN)

**DISCIPLINARY REVIEW BOARD (DRB)/EXECUTIVE OFFICER INQUIRY (XOI):** Investigative tool that is not required, but may be used to screen cases for the CO. Member cannot refuse DRB/XOI.

**RIGHT TO REFUSE NJP**

- ALL MEMBERS CAN REFUSE NJP, UNLESS ATTACHED TO OR EMBARKED ON A VESSEL.
- Right to refuse ends when punishment is imposed/announced.
- If member refuses NJP, CO retains all administrative and disciplinary options, except NJP, open to him/her prior to the refusal.

**RIGHT TO CONSULT WITH COUNSEL:**

- There is no right to counsel at NJP. The only counseling related to NJP is the right to consult with counsel about whether or not to accept NJP. This right applies only to members who have the right to refuse NJP (i.e. those not attached to or embarked on a vessel) – *Booker* rights.
- If a member has the right to refuse NJP, asks to consult with counsel, and is denied this opportunity, the command may still hold NJP (presuming the servicemember does not actually assert their right to refuse NJP). The only consequence to the command is that this NJP will not be admissible in aggravation at any later court-martial that might occur.

**RIGHTS AT NJP HEARING:**

- To be present. CO may not hold NJP in member's absence; however, member may waive right to personal appearance.
- To remain silent.
- To have a personal representative.
- To examine evidence.
- To present matters in defense or extenuation & mitigation.
- To call "reasonably available" witnesses. (No subpoena power over civilian witnesses.)
- To a public hearing. Member may request "closed mast" but no right to one.

**MILITARY RULES OF EVIDENCE:** Except privileges and self-incrimination, do not apply.

**STANDARD OF PROOF:** Preponderance of the evidence, but still must prove every element of the offense.

**CO SCRIPT/GUIDE FOR NJP:** JAGMAN, Appendix A-1-(E) (1).

**CO's OPTIONS:**

- Dismissal – with or without warning;
- Dismissal and imposition of administrative/nonpunitive measures. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*;
- Imposition of authorized punishment. (See *APPENDIX A: NJP Punishment Chart*);
- Refer to a higher forum or superior CA;

**PUBLICATION OF NJP RESULTS:**

- Postpone action.
- Publication allowed within one month of NJP.
- If only military members have access to information, full publication, including name, is allowed. If there is civilian access to the information, the member's name must be removed.
- Best course of action: Publish **only** date of NJP, offense, paygrade of member, and punishment.

**NJP – CLEMENCY & CORRECTIVE ACTION**

**REFERENCES:** (a) UCMJ, Article 15  
 (b) MCM, Part V  
 (c) MILPERSMAN 5812-010  
 (d) JAGMAN 0118  
 (e) MCO P5800.16 (series) (LEGADMINMAN)

**AUTHORITY TO GRANT CLEMENCY OR TAKE CORRECTIVE ACTION**

- Imposing officer;
- Successor in command (temporary or permanent);
- Subsequent CO after transfer of member; or
- Appellate authority (GCMCA).

**TYPE OF CORRECTIVE ACTION:**

**SET ASIDE:** Set aside any or all of the punishment (executed or unexecuted) and restore all property, privileges, and rights affected by that portion of the punishment. Set-asides are used to correct a clear injustice. Clear injustice is defined as an unwaived legal or factual error which affirmatively injured the rights of the member. Clear injustice does not include the fact that the member's performance has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on retention or promotion potential of the member. Absent unusual circumstances, the power to set aside punishment will be exercised within four months of the punishment. Set-asides exceeding this four-month timeframe must include a detailed justification of the unusual circumstances which resulted in the delay. NJP authority may set aside only punishments that he/she has the power to impose. Setting aside an NJP has the effect of voiding the punishment and restoring the service member to the position he would have been in had the NJP not been imposed.

**REMISSION:** Cancel unexecuted portions of a punishment. End of current enlistment or discharge automatically remits unexecuted punishment. Member may not be retained beyond EAOS to serve NJP punishment.

**MITIGATION:** A reduction in the quantity or quality of an unexecuted punishment. The new mitigated punishment may not be for a period greater than the original punishment.

**SUSPENSION:** Punishment held in abeyance/member on probation for up to 6 months.

- Conditions of suspension – Member cannot commit further violations of the UCMJ. Additional terms should be in writing. Must be lawful order capable of performance. (Examples: make restitution to a victim; to **not** enter certain establishments; to submit to searches; to conduct GMT; to successfully complete course of rehabilitation, etc.)
- Vacating suspension – If member violates terms of suspension or UCMJ, suspension may be vacated by any authority competent to impose punishment. Member should be notified and, although a hearing is not required, unless impracticable, the member should be given an opportunity to be heard. The decision to vacate is not appealable.

## TIME LIMITS

- The power to set aside an NJP must be exercised within a reasonable time after the punishment has been executed. Absent unusual circumstances, 4 months is considered a reasonable time.
- Paragraph 3005.3c of reference (e) allows suspension – as opposed to setting aside – of an executed punishment of reduction or forfeiture only within 4 months of the date it is executed.

**NJP – APPEALS**

**REFERENCES:** (a) UCMJ, Article 15  
(b) MCM, Part V  
(c) JAGMAN 0116, 0117  
(d) MCO P5800.16 (series) (LEGADMINMAN)

**REVIEWING AUTHORITY:** Navy – area coordinator or GCMCA in imposing officer's chain of command. Marine Corps – immediate superior in the operational chain of command to imposing officer.

**GROUNDS FOR APPEAL:**

- Unjust: Not guilty of offense
- Disproportionate: Guilty but punishment too harsh or unfair

**TIME LIMIT:**

- 5 working days (excluding weekends and holidays) from date of imposition of punishment;
- Extensions may be requested for good cause;
- Late appeals may be denied only by the appellate authority.

**PROCEDURE:**

- Appeal must be in writing;
- Via the officer who imposed NJP;
- Endorsement should include:
  - Statement of facts
  - Copies of documents/witness statements
  - Copy of member's SRB performance

**REQUEST FOR STAY OF RESTRAINT:** Applies only to restraint and extra duties. May be made in writing or verbally. If request is made and appellate authority fails to act within 5 days after appeal submitted, restraint/extra duty punishments must be stayed until the appellate authority acts.

**APPELLATE AUTHORITY'S ACTION:** Standard of review is "abuse of discretion."

**REFERRAL TO JUDGE ADVOCATE:** Required if punishment was greater than what O-3 or below CO could impose.

**REHEARING:** At any rehearing, the maximum punishment is limited to the punishment imposed at the original NJP.

### **Section III: JAGMAN INVESTIGATIONS**

#### **JAGMAN INVESTIGATIONS**

**REFERENCES:** (a) JAGMAN, Chapter II  
(b) MILPERSMAN 1770 -010  
(c) MCO P5800.16 (LEGADMINMAN)

#### **TYPES OF INVESTIGATIONS:**

- Courts of Inquiry (COI)
- Boards of Inquiry (BOI).
- Command Investigations (CI).
- Litigation-Report Investigations (LR).

**PRELIMINARY INQUIRY (PI):** The JAGMAN provides CA's the option to conduct a 3-day PI to determine whether further investigation is required. Based upon the result of the PI, the CA may decide to take no action or to convene some form of JAGMAN Investigation. Results of PI's may need to be reported to ISIC through normal reporting methods.

**COURT OF INQUIRY (COI):** The most formal of all JAGMANS. Used for the most serious cases, "major incidents," involving multiple deaths, significant national or international press interest, significant environmental damage, etc. (see reference (a), appendix A-2-a paragraph 9). Must be convened by a GCMCA.

**BOARD OF INQUIRY (BOI): [Not to be confused with officer separation BOIs]** Less formal than a COI, but also used for "major incidents." Must be convened by a GCMCA.

**COMMAND INVESTIGATION (CI):** Most frequently used investigation of all JAGMANS. Not used for any incident considered a "major incident" until command consults with GCMCA.

- One person appointed as Investigating Officer (IO).
- Testimony may be sworn or unsworn.
- Report should include Findings of Fact, Opinions, and Recommendations.
- No subpoena power over civilians.

**LITIGATION-REPORT INVESTIGATIONS (LR):** This form of JAGMAN Investigation is utilized when the primary purpose of the investigation is to defend the legal" and thus protected from release during litigation. There are special rules interests of the Government. The LR is designed to be "Attorney Work-Product,for convening and conducting:

- The CA must consult with the “cognizant judge advocate” before convening.
- Requires special Convening Order (see reference (a)).
- The investigation is conducted under direction and supervision of a JAG.
- Special rules for witness statements.
- Opinions & recommendations only ordered under the authority of the JAG.

**ENDORSEMENTS:** CO's should address any & all deficiencies identified in the investigation, and detail corrective action taken. Special rules apply in referencing certain admin and disciplinary actions (e.g., nonpunitive letters shall not be mentioned).

- Command Investigations: If the CA determines the investigation is of no interest to anyone outside the command, the CA may retain the investigation report locally. If the report is forwarded, it must be forwarded to GCMCA. It is no longer appropriate to make OJAG the ultimate addressee.
- LRs: Forward to OJAG Code 15, via SJA of GCMCA. Special markings are required.

#### RETENTION:

- Command Investigations: retain copy for 2 years.
- LRs: Call OJAG Code 15 (DSN 325-4600 or (202) 6854600) before destroying.

#### FOIA RELEASE AUTHORITIES:

- Command Investigations: Final reviewer.
- LRs: OJAG.

**LOD/MISCONDUCT CHANGES:** Whenever an injury occurs which requires a LOD/Misconduct determination, the command must conduct a PI and forward the results to the GCMCA using the Personnel Casualty Report or CI if appropriate. See reference (b).

**DOCUMENTING LOD/MISCONDUCT:**

- Health/medical record entries: Where CO concludes that injury was “in the LOD, not due to misconduct.”
- Command Investigations: Where possibility that determination will be “not in the LOD” or due to misconduct.
- “Limited Investigation”: Authorized where member’s death occurs in CONUS, off-base, while on liberty, and there is no discernable nexus between circumstances of death and the naval service.
- JAGMAN Investigations: Required in all cases not meeting above test.

See *DEATH INVESTIGATIONS*.

## DEATH INVESTIGATIONS

- REFERENCES:** (a) JAGMAN, Sections 0233-0240  
(b) MILPERSMAN 1770-010 to 1770-260  
(c) MCO P5800.16 (series) (LEGADMINMAN)  
(d) MARADMIN 592-07

**PERSONNEL CASUALTY REPORT:** Required in the event of the death of a member. See reference (b).

**NCIS NOTIFICATION:** Must be made if there is a death occurring on a Naval vessel or Navy/Marine Corps aircraft or installation except when the cause of death is medically attributable to disease or natural causes.

### JAGMAN INVESTIGATION:

- If death occurred in CONUS, off-base, while the member was off-duty, and there is no connection between the Naval service and the circumstances of death, the command may simply obtain the investigation (police report and/or autopsy) completed by civilian authorities and maintain the record as an internal report.
- If death is a result of a previously known medical condition and medical care is not in issue; or, death was caused by enemy action, no investigation is required.
- All other circumstances, a full JAGMAN investigation (typically, a command investigation) is required.
- Marine Corps commands will conduct at minimum a preliminary inquiry into the facts and circumstances surrounding the death of a Marine. See reference (d)

**STATUS OF INVESTIGATION REPORTS (SIRs):** Required every 14 days until the JAGMAN investigation is forwarded to the next reviewing authority. See reference (b).

**LINE OF DUTY DETERMINATIONS:** Required for all death cases. If the deceased's conduct is called into question, the CO may appoint an individual not associated with the case (outside the chain of command) to review the investigation from the perspective of the deceased, to ensure thoroughness and accuracy of the findings.

**FORWARDING:** Do not delay while awaiting final autopsy reports, death certificates, etc. Such documents can be forwarded under separate cover.

See also *JAGMAN INVESTIGATION* and *SUICIDES, ATTEMPTS & GESTURES*.

**REPORTING REQUIREMENTS FOR LOSS OR COMPROMISE OF CLASSIFIED MATERIAL**

**REFERENCES:** (a) SECNAVINST 5510.36A (Chapter 12)  
(b) JAGMAN Chapters 1 & 2

**POLICY:** A loss of classified information occurs when it cannot be physically located or accounted for. A compromise is the unauthorized disclosure of classified information to a person(s) who does not have a valid clearance, authorized access or a need-to-know. A possible compromise occurs when classified information is not properly controlled.

**REPORTING REQUIREMENTS:** Per reference (a), an individual who becomes aware of a loss or compromise must notify their Commanding Officer or Security Manager. The commanding officer must immediately notify local NCIS office and initiate a Preliminary Inquiry (PI) whether or not NCIS initiates an investigation (unless NCIS requests that no PI be conducted.) The JAGMAN and CNO directive establish additional reporting requirements. The format for appointing orders and PI/JAGMAN should comply with reference (a), Exhibits 12A-D.

**PRELIMINARY INQUIRY:**

- CO appoints command official (not Security Manager) to conduct PI. (Ref (a), sect.12-4.1)
- PI shall be initiated and completed within 72 hours. (sect 124.2)
- PI message report (or letter) to ISIC, CNO(N09N2), Originator and Original Classification Authority of information, local NCIS office, National Security Case Disposition Authority (NSCDA), OJAG (Code 17), and others listed in sect 12-8. (sect 12-4.2)
- PI shall completely and accurately identify the information lost or compromised. (sect 12-5)
- If PI determines no loss or compromise or “possibility of compromise is remote” message report not required. (sect 12-7.3)
- Results of PI may indicate more detailed investigation required. (sect 12-9.1)

**JAGMAN INVESTIGATION:**

- JAGMAN may be used to recommend any corrective or disciplinary action. (sect 12-9.1)

- CO appoints command official (not security manager) to conduct JAGMAN. (sect 12-10.1)
- Follow reference (b) guidelines; ensure appropriate classification of report and enclosures. (sect 12-12)
- Forward JAGMAN to CNO (N09N2) via administrative chain of command; info copies to NCIS, OCA and originator. (sect 12-13)

**NATIONAL SECURITY CASE REPORTING** (*See reference (b), sect. 0126*):

- Results of PI or NCIS investigation indicates case may meet national security case criteria.
- A national security case is one which, to any serious degree, involves the compromise of a military or defense advantage over any foreign nation or terrorist group; involves willful compromise of classified information; affects our capability to resist hostile or destructive action; or involves an act of terrorism for more detailed investigation required.
- JAGMAN designates certain senior line commanders as National Security Case Disposition Authorities (NSCDA).
- Report case within 72 hour PI period to OJAG and cognizant NSCDA.

If designated as a national security case NSCDA must make periodic message reports (every 15 days) to CNO until resolution or until the case is determined not to be a national security case.

**JUDGE ADVOCATE GENERAL REPORTING:** Report all cases to OJAG (Code 17) that involve classified information, whether or not designated a national security case:

- When criminal prosecution contemplated;
- Whenever a major development in the case or investigation occurs; or
- At least every 30 days.

**ISIC MAJOR CASE/HIGH VISIBILITY CASE REPORTING REQUIREMENTS:** Some ISICs require periodic reporting on certain types of cases considered "major" or "high visibility." Report to JAG can be sent to ISIC as well to satisfy both requirements in cases involving classified information.

## **CLAIMS**

**REFERENCES:** (a) JAGMAN, Chapters II, VIII, and XII  
(b) JAGINST 5890.1 (series)

**INVESTIGATION:** If an incident occurs which gives rise to the possibility that a claim may be submitted either for or against the government, some form of admin investigation will be required in order to adjudicate or defend the claim. Typically, a JAGMAN investigation will be required.

- A “Litigation-Report Investigation” is appropriate whenever the “primary purpose” of the investigation is to defend the legal interests of the Navy.
- Consult the “cognizant judge advocate” before convening a “Litigation-Report Investigation” or if you have questions.

**NOTIFICATION:** The servicing Code 15 Claims Unit should be notified of any incident which might result in a claim. The Personnel Claims Unit and Tort Claims Unit in Norfolk may be contacted at (757) 444-5341 or DSN 564-5341.

**CLAIM RECEIPT:** Should the command receive an actual claim, it must be date stamped and the original forwarded immediately to the servicing Code 15 claims unit - along with all accompanying material and original envelope with postmark.

**ADVANCE COPY OF INVESTIGATION:** Provide the Personnel or Tort Claims Units with an advance copy.

**NOTIFICATION OF LAWSUIT:** If a lawsuit has been filed against an individual within the command, the command or the DON, immediately notify the servicing NLSO and Office of the Judge Advocate General (OJAG) Code 15, at DSN 325-4600 or (202) 685-4600.

**ADMIRALTY INCIDENTS:** Any claim that may arise from the operation of a vessel upon navigable waters is considered an admiralty incident. Every admiralty incident must be reported immediately to OJAG Code 11 at DSN 325-5040 or (202) 685-5040.

**FOREIGN CLAIMS:** See *FOREIGN CLAIMS*.

## Section IV: ADMINISTRATIVE SEPARATIONS

**REFERENCES:** (a) DOD Dir 1332.14  
 (b) MILPERSMAN, sections 1900, 1910  
 (c) MCO P1900.16 (series)  
 (MARCORSEPMAN), Chapters 1 & 6

**PURPOSE:** Enlisted administrative separations (ADSEPS) are intended to promote readiness by maintaining standards of performance, achieve authorized force levels, and provide for separation of enlisted personnel for various circumstances.

**BASIS OF SEPARATION:** The reason for separating a service member. A list of bases are found in 1910-100 of reference (b), and the table of contents of reference (c). Bases are divided into two broad categories:

- Voluntary: The service member requests separation. Reasons may include hardship, pregnancy, conscientious objector, etc. All voluntary separations must be at the convenience of the Government.
- Involuntary: The Service initiates the separations process. Involuntary basis include drug abuse, pattern of misconduct, serious offenses, alcohol, rehab failures, etc.

Mandatory basis of separation. Involuntary basis of separation where the commander is required to process.

USMC:

- Fraudulent entry
- Homosexual conduct
- Drug abuse
- Supremacist / Extremist activities
- Sexual harassment
- A second substantiated domestic violence incident (CRC level 3 or above).

Navy:

- Deviant sexual behavior
- Sexual harassment
- Misconduct that could have lead to death or serious bodily injury,
- Drug abuse,
- Illicit use of over the counter medication/inhalants
- Supremacist / Extremist activity,

- Alcohol rehab failure.

**CONVENING AUTHORITY:** Official authorized to convene the separation process. Normally the service member's Commanding Officer.

### **NOTIFICATION vs. ADMINISTRATIVE BOARD PROCEDURES**

- Notification: Appropriate for all Convenience of the Government cases, and for misconduct cases (except mandatory processing bases listed below) where Convening Authority feels General or Honorable discharge is warranted and individual being processed (respondent) is not entitled to a board.
- Administrative Board: all homosexual conduct cases, mandatory processing bases, and other misconduct cases where CA feels OTH is warranted.
- Right to Board: Member is entitled to an admin board when OTH is authorized and sought, when member has at least 6 years active and/or Reserve service, or when processing is mandatory.

### **CHARACTERIZATION OF SERVICE:**

- Honorable: Met standard of acceptable conduct & performance; or is otherwise so meritorious that any other characterization is clearly inappropriate. For Navy, must have trait avg. of 2.50 or above at EAOS. For USMC, must have Pro/Con marks of 3.0/4.0 at EAS.
- General (under honorable conditions): Honest and faithful service, negative aspects outweigh positive. Member may lose significant benefits, such as GI Bill.
- Other than Honorable (OTH): One or more acts or a pattern of misconduct constituting significant departure from conduct expected from Sailors and Marines. Service member normally loses all benefits.

**SEPARATION AUTHORITY (SA):** The official who approves a separation.

- Navy SAs:

- SPCMCA: When notification procedure used and General or Honorable discharge is least favorable characterization. In all cases where member is involuntarily separated by a SPCMCA, member can request review of case by GCMCA before separation is awarded. See *Appendix J*.
- GCMCA: When administrative board procedure used if Other than Honorable (OTH) discharge awarded. If General or Honorable discharge is awarded by Admin Board, SPCMCA can act as the SA in some situations. See *Appendix J*.

- **BUPERS/SECNAV:** Active duty or reserve personnel within 2 years of retirement; best interest of the service cases; conscientious objection; homosexual conduct cases; when separation is based solely upon a serious offense or serious offenses (including violation of Article 112a, UCMJ) which resulted in a conviction by a special or general court-martial that did not adjudge a punitive discharge, and the GCMCA recommends a characterization of service as under OTH.

- **USMC SAs:**

- **GCMCA:** Most cases.
- **DC M&RA:** When the member is being processed for involuntary separation and has 18 years or more total active military service; when separation is based solely upon a serious offense or serious offenses (including violation of Article 112a, UCMJ) which resulted in a conviction by a special or general court-martial that did not adjudge a punitive discharge, and the GCMCA recommends a characterization of service as under OTH conditions.
- **SECNAV:** Reserve personnel within 2 years of retirement; best interest of the service cases; and homosexual conduct cases.

**LEGAL REVIEW:** In cases where an OTH is recommended, or when a letter of deficiency is submitted, the record must be reviewed by a Judge Advocate before the SA can act.

**CONDITIONAL WAIVERS:** A respondent entitled to an administrative board may request a conditional waiver of his right to a board, contingent upon receiving a General or Honorable discharge. Approved by GCMCA **only** if favorably endorsed by CA.

**ENDORsing ADMIN BOARD CASES:** If admin board recommends retention, CO may still recommend discharge to SA. As to characterization, CO can recommend a more favorable discharge than the admin board recommended, but service members may not receive a discharge worse than what is recommended by the Board.

**USN PAGE 13/USMC PAGE 11 IS EXTREMELY CRITICAL DOCUMENT:** May be a prerequisite to administrative separation processing. Clear guidance on who may issue a Page 13/11 should be promulgated (typically, delegated to Dept Heads and/or Legal Officer). For USMC, the Commanding Officer must sign adverse page 11 entries. See MCO P1070.12 IRAM concerning appropriate entries. Counseling normally required for following basis:

- Parenthood
- Personality disorder
- Entry level performance
- Weight control failure
- Unsatisfactory performance
- Pattern of misconduct

- Minor disciplinary infractions
- Physical / Mental conditions not amounting to a disability, or
- If required by MARCORSEPMAN paragraph 6105

**(ADSEP) AFTER EAOS/EAS:** A member may not be adversely administratively separated after the end of their enlistment except for a separation in lieu of court-martial (SILT). If a member is extended beyond EAOS/EAS for purposes of court-martial, and the command decides not to pursue the criminal case, the member must be separated with a characterization of discharge warranted by service record unless the command's action is based on a member-submitted SILT request. Commands should consult with Trial Counsel or SJA before taking action on a case.

**ADMIN LEAVE:** Separation leave shall not be granted for members who are being administratively discharged.

See also *PREGNANCY; HIV ISSUES; HOMOSEXUAL CONDUCT; FREEDOM OF EXPRESSION; and DOMESTIC VIOLENCE/FAMILY ADVOCACY INCIDENTS.*

**ENLISTED ADMINISTRATIVE SEPARATION BOARDS**

- REFERENCES:** (a) MILPERSMAN, section 1910-500  
 (b) MCO P1900.16 (series)  
 MARCORSEPMAN, Chapter 6

**WHEN REQUIRED:** Where respondent is being processed with an OTH discharge or the member has more than 6 years of service and requests a board.

**ADMIN BOARD COMPOSITION:**

- 3 or more commissioned, warrant, or noncommissioned officers (E-7 and above).
- Majority must be commissioned officers.
- Senior member must be O-4 or above (line or staff).
- E-7 or above member must be senior to Respondent (lineally)
- Reservist Respondent – only commissioned officers, at least one reservist.

**WITNESS REQUESTS:** Must be timely. No subpoena power for civilian witnesses. CO may expend funds if live testimony is both necessary and reasonably available based on operational commitments or necessity. CO should consider such things as cost, delay, and interference with mission in deciding whether to expend funds.

**CONTINUANCE REQUESTS:** Respondent should be given reasonable time in order to prepare for admin board.

- Senior member (Navy) rules on requests for continuances.
- Watch delay tactics with respect to upcoming EAOS.  
 [Refer to p. 46 -ADSEP after EAOS/EAS]
- If respondent goes UA while pending the board, may proceed in absentia.

**CHALLENGES FOR CAUSE:** May be made where board member cannot make a fair and impartial decision.

- Navy: CO rules on challenges.
- USMC: Senior member or Legal Advisor rules on challenges. If senior member challenged, non-challenged board members rule on challenge.

**ISSUES BEFORE THE ADMIN BOARD:**

- Is the basis for separation supported by a preponderance of evidence?
- If the basis is supported, should respondent be separated or retained?
- If separated, what should the characterization of discharge be (Honorable, General (Under Honorable Conditions), or Other Than Honorable (OTH)?)

**ADMIN BOARD EVIDENCE:** Military Rules of Evidence do not apply.

- Pre-service/prior enlistment adverse matters – May only be considered on the issue of retention or separation if the evidence is not remote or isolated. May never be considered on the issue of characterization.
- Findings of Court-Martial or civilian courts are binding upon subsequent administrative boards (USN only).

**AVOID UNLAWFUL COMMAND INFLUENCE:** See COURTMARTIAL BASICS.

## ***OFFICER MISCONDUCT AND SEPARATIONS***

**REFERENCES:** (a) MILPERSMAN 1611  
 (b) BUPERS 1610.10 (series)  
 (c) Navy Regulations, Article 1122  
 (d) MILPERSMAN 1070-020  
 (e) SECNAVINST 1920.6 (series)  
 (f) MCO P5800.16 (series) (LEGADMINMAN)

**NOTE:** In ALL cases of officer misconduct immediately contact BUPERS (PERS-834) at (901) 874-3197/2097 or DSN 882-3197/2097 for assistance with Navy cases, or HQMC (JAM) at 703-614-4250 or DSN 224-4250

**NOTIFICATION:** The following cases require notification and follow on reports for instances of officer misconduct, specifically including:

- Preferral of court-martial charges.
- Imposition of NJP. Notify PERS-834 / JAM by letter as soon as results are “final.” NJP results must be sent via the first flag officer in the admin chain of command. See reference (a) or (f) for appropriate format and informational requirements. Officer imposing NJP must recommend whether officer should be removed from a promotion list and whether they should be made to “show cause” for retention (see *ADMIN SEPARATION* below).
- Arrest by civilian authorities. A “Civil Action Report” must be immediately sent to PERS-834 / JAM by message if a BCD would be authorized for the offense under the UCMJ (e.g., drunk driving). When results become “final,” a close-out letter report is required.
- UA: All facts and circumstances are to be immediately relayed to PERS-834 / JAM by message. Next of kin letters must be sent after 10 days and DD 553 notification sent after 30 days. If the officer had access to classified info, and there are any indications that the UA may be inimical to national security, notify NCIS.

**NON-PUNITIVE LETTERS OF CAUTION (NPLOC's):** A common administrative counseling tool in cases for officer poor performance (e.g., non-attainment of qualifications) or neglect. NPLOC's may not be referred to in fitness reports or forwarded to BUPERS. Underlying facts which caused the NPLOC may properly be mentioned in fitness reports. If adverse matter is included in a fitness report or other official record, it must be referred to the member for statement. See BUPERSINST 1610.10 and JAGMAN 0105. See *NON-PUNITIVE MEASURES*.

**ADMIN SEPARATION:** Officers may be administrative separated from the service for the following reasons:

- Voluntary:
  - Resignation / Release from Active Duty (RAD);
  - Retirement;
  - Separation in lieu of Court Martial
  - Convenience of the Government, for e.g.: Parenthood, Hardship, Separation to Accept Public Office, Interservice Transfers
- Involuntary:
  - Involuntary RAD;
  - Failure to Promote;
  - Substandard Performance of Duty
  - Misconduct, or Moral, or Professional Dereliction

**SEPARATION PROCESS:** An officer may be separated using notice procedure, or via board procedure, also known as a BOARD OF INQUIRY (BOI- not to be confused with a BOI administrative investigation format). Notice may be used for probationary officers, who are those officers that have not completed the requisite time in service as established by reference (e). All other officers are entitled to a BOI. .

**SHOW CAUSE AUTHORITY:** Only a Show Cause Authority, as designated or appointed by SECNAV, may convene a BOI. For the Navy, Navy Personnel Command has been designated a Show Cause Authority. For USMC, CMC has been delegated Show Cause Authority. CMC has further delegated this authority to DC M&RA. SECNAV has authorized generals and lieutenant generals in command to be designated as alternate show cause authorities.

See *DETACHMENT FOR CAUSE*.

**DETACHMENT FOR CAUSE (USN)**

**REFERENCES:** (a) MILPERSMAN 1611-020

**ENLISTED DFC:** Detachment for cause of chief petty officers and selected petty officers are conducted IAW MILPERSMAN 1616-010. Detachment for cause of officers must be conducted IAW reference (a). BUPERS is the approval authority.

**GROUNDS:** Four reasons for requesting an officer DFC:

- Misconduct;
- Unsatisfactory performance involving one or more significant events (gross negligence or complete disregard);
- Unsatisfactory performance over an extended period of time after counseling or LOI; or
- Loss of confidence of an officer in command.

**DETACHMENT FOR CAUSE IS GENERALLY NOT AN OPTION WHEN:**

- Reassignment within the command is possible;
- Officer is at PRD, in receipt of orders or has relief on board; or
- Other available alternatives exist within the command to resolve the situation.

**DOCUMENTATION:** Unsatisfactory performance over an extended period of time must be properly documented (e.g., Letter of Instruction). All allegations must be adequately supported by appropriate inquiry or documentation.

**DISCIPLINARY ACTION:** Must be taken before requesting a detachment for cause based on misconduct or an explanation must be provided to Navy Personnel Command.

**DETACHMENT PAPERWORK:** Notification to the member must advise the officer that an approved detachment for cause request will be filed in the officer's official record.

**OPPORTUNITY TO RESPOND:** The officer must be given 10 calendar days to provide a written response to the detachment for cause request.

## **Section V: PERSONNEL ISSUES**

### **ALCOHOL ABUSE PREVENTION**

- REFERENCES:** (a) OPNAVINST 5350.4 (series)  
(b) SECNAVINST 5300.28 (series)  
(c) OPNAVINST 1700.16 (series)  
(d) MCO P1700.24 (series)  
(e) NAVMC 2931

**ALCOHOL INCIDENT:** An offense, punishable under the UCMJ or civilian laws, committed by a member, to which, in the judgment of the member's CO, the offender's consumption of alcohol was a contributing factor. Alcohol abuse / dependency screening is mandatory for members who are involved in an alcohol incident regardless of rank or status.

**DEGLAMORIZATION:** Alcohol abuse is inconsistent with Navy and Marine Corps initiatives to promote personal excellence among members. Alcohol abuse should not be promoted by the chain of command.

#### **GENERAL RESPONSIBILITIES OF NAVY CO:**

- Alcohol abuse information should be provided by a trained DAPA during indoctrination of newly reporting personnel.
- Command DAPA must screen all alcohol/drug-related cases brought to the attention of the command and forward to Counseling and Assistance Center (CAAC) for evaluation and an appropriate determination of treatment. Medically screen every member involved in an alcohol incident.
- Document substantiated alcohol incidents with page 13 entries, evals, fitreps, and other reports [drug and alcohol abuse reports (DAARs)] as required.
- Clearance eligibility incidents shall be referred to Department of the Navy Central Adjudication Facilities (DONCAF).
- Review the status of members involved in alcohol abuse incidents and take appropriate disciplinary, remedial, educational and/or administrative action and make a final report to DONCAF. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.
- Ensure that breathalyzer and/or field sobriety tests are conducted by base security when there is reasonable suspicion of alcohol abuse. Additionally, institute a random gate inspection program. See *SEARCH AND SEIZURE*.
- Consult with medical and alcohol abuse program personnel when there is a suspected problem.
- Ensure compliance of drinking age laws under state/country law. If there is no local law regarding the drinking age, OPNAVINST 1700.16 establishes a drinking age of 18.

- Conduct screening for overseas assignment per transfer manual to ensure members with unresolved alcohol incidents are not considered for overseas duty. Monitor aftercare of members who have completed treatment programs. Members shall be processed for ADSEP by reason of alcohol rehabilitation failure for any alcohol-related misconduct at any time in their career after completing a military treatment program. Waivers may be granted by COMNAVPERSCOM. See *ADMINISTRATIVE SEPARATIONS*.
- Reference (a) requires service record documentation of all substantiated drunk driving offenses. It also requires all service members to report when they are charged, arrested, or convicted of any alcohol-related offense. Failure to do so subjects the member to punishment for violating a lawful general order.

#### **GENERAL RESPONSIBILITIES OF MARINE CORPS CO:**

- Marines at all levels will receive prevention education and training at least annually. Commanding Generals and Commanding Officers are tasked with implementation of the drug and alcohol abuse program outlined in MCO P1700.24B and NAVMC 2931.
- Conduct screening for overseas assignment per transfer manual to ensure members with unresolved alcohol incidents are not considered for overseas duty.
- Unit Substance Abuse Control Officer (SACO) / Substance Abuse Control Specialist (SACS) will maintain case files on Marines identified with drug / alcohol problems and provide aftercare services for individuals who complete a drug / alcohol treatment program.
- Commanders will direct a SRB page 11 entry be made after counseling a Marine for any alcohol-related misconduct or unsatisfactory performance. Consult the PES for "DC" fitness report submission requirements and mandatory Section C comment requirements.
- See MCO P1900.16, paragraph 6209 for further guidance on processing of Marines for ADSEP by reason of alcohol rehabilitation failure.

**PREVENTION:**

- Deglamorize alcohol use; emphasize responsibility and moderation.
- Conduct regular command training on alcohol abuse.
- Ensure club personnel are trained not to serve underage or intoxicated individuals.
- Institute and promote a designated driver program at base clubs and at commands.
- Suspend base driving privileges for alcohol-related driving incidents.
- Seek installation commander approval to serve alcohol at official functions on base, establishing a plan to prevent alcohol-related incidents.
- Promote firm and equal treatment of alcohol abusers through NJP, Court-Martial or administrative means.
- Publish DAPA notes in POW (USN).

## **DRUG PREVENTION AND URINALYSIS PROGRAM**

**REFERENCES:** (a) OPNAVINST 5350.4 (series)  
(b) SECNAVINST 5300.28 (series)  
(c) MCO P1700.24 (series)

**TRAINING:** Include and emphasize drug education in the command indoctrination program. Conduct periodic drug abuse awareness education in GMT programs. Ensure all personnel understand the zero tolerance policy and are aware of voluntary self-referral provisions of references (a) and (b).

**USMC:** In accordance with reference (c), officers and SNCOs will receive annual supervisor training in drug and alcohol abuse prevention. In addition to the officer and SNCO annual training objectives, NCOs will receive drug and alcohol abuse prevention training through an approved course provided by the Installation Substance Abuse Counseling Center (SACC). NCOs will provide this prevention training to their subordinates annually.

**OBTAINING EVIDENCE OF DRUG USE:** See *SEARCH & SEIZURE -- DRUG CASES*.

### **URINALYSIS PROGRAMS:**

- **COORDINATORS & OBSERVERS:** Must be designated in writing. Whenever possible assign officers or staff NCOs. Coordinators and observers should be tested separately and should never provide a sample in any urinalysis in which they participate.
- **ATTENTION TO DETAIL & SECURITY:** The entire collection process will be scrutinized in any court-martial or admin separation board. Admissibility of test results is dependent on a tight chain of custody and protection of samples after collection.
- **TESTING GOAL - USN:** Mandatory annual unit sweep (minimum one) of all assigned personnel. 10 - 20 percent of the command each month. Random sampling of smaller numbers of personnel on a more frequent basis provides best results; it reduces the risk of predictability of command testing and raises the perceived risk of detection.
- **TESTING GOAL - USMC:** Every unit shall have an aggressive compulsory Urinalysis Testing Program, which ensures systematic screening of all Marines annually, regardless of rank, for the presence of drugs. Units will test at least ten percent of their population monthly under the "IR" premise. All Marines reporting in from PCS and leave will be tested within 72 hours of their arrival.

**24-HOUR UA & SUB-UNIT TESTING:** Commands may establish policies to test all members returning from UAs longer than 24 hours as a sub-unit sweep. The policy should be in writing and enforced equally and consistently to all members returning from UAs in excess of 24 hours.

**"FAILURE TO GO":** If a member cannot provide a sample or produce a sufficient amount, require the member to remain in a controlled area and drink fluids.

**REFUSAL TO PROVIDE:** A commissioned officer (but not CO, XO or Legal Officer) should give a direct order.

**POSITIVE RESULTS:** Message report from the NDSL is official notification of lab test results and constitutes authority to take administrative or disciplinary action. Use may be limited depending on the basis for testing. For example, command-directed urinalyses may not be used to punish a member nor used to give a member an OTH (although the member shall be processed for separation). The CO should attempt to determine if:

- The member is a drug abuser and discipline appropriately (administrative separation processing is mandatory) or,
- The member's positive urinalysis result was caused by administrative error (faulty local chain of custody, evidence or tampering) and take appropriate corrective action, or
- The drug use was not wrongful, in which case the member is not identified as a drug abuser because it will not be considered a drug abuse incident.

Once the CO has made a determination he/she should notify the Immediate Superior in the Chain of Command (ISIC) and PERS-6 by official correspondence with specific circumstances. See *APPENDIX I* and *ADMINISTRATIVE DISCIPLINARY OPTIONS*.

NOTE: Only samples tested at a DOD certified lab or one of the three Navy Drug Labs can be used as evidence for punitive action or administrative discharge. See reference (a).

**STEROIDS:** Navy Drug Labs do not test for steroids. Commands that want to test a sample for steroids should contact Mr. Tom Callahan at (310) 825-2635 and ask for a military quote. As of April 2008, the cost per sample was \$245.00. The mailing address and fax number for the UCLA Olympic Lab are:

UCLA Olympic Lab 2122 Granville Ave Los Angeles, CA 90025  
Fax (310) 206-9077

## HIV ISSUES

**REFERENCES:** (a) SECNAVINST 5300.30 (series)  
(b) SECNAVINST 1850.4 (series)

**NOTIFICATION OF POSITIVE SCREENING:** Results must be provided to all medical/dental record holders.

**ASSESSMENT INTERVIEW:** Must be completed by cognizant medical health authority, and include counseling on risk factors, transmission factors, and blood donation.

**LIMITATIONS ON USE OF HIV INFORMATION:** Information gained during initial medical interviews cannot be used against the member in court-martial, NJP, administrative separation proceedings, as a bar to enlistment, or a basis for adverse eval or fitrep marks.

**CONFIDENTIALITY IS THE RULE:** Handle HIV information with the highest degree of confidentiality. Information shall not be released to anyone unless there is a demonstrated need to know. Privacy Act and Health Insurance Accountability and Portability Act (HIPAA) considerations strictly apply.

**WRITTEN PROTECTIVE ORDERS:** Ensure that "safe sex" order has been issued by the appropriate medical authority.

**ASSIGNMENT OF MEMBER:** HIV+ member is not deployable and is normally assigned within 300 miles of certain Naval Medical Treatment Facilities.

**VOLUNTARY SEPARATION:** Member may request within 90 days after initial classification is completed (i.e., when member signs medical board report). Characterization is type warranted by service record (Honorable or General). Separation may be delayed up to 180 days after initial evaluation to minimize manning shortfalls.

**INVOLUNTARY SEPARATION:** Authorized for HIV+ members who develop AIDS. Use the Disability Retirement System IAW reference (b).

## **HOMOSEXUAL CONDUCT**

- REFERENCES:** (a) 10 U.S.C. § 654  
(b) DoD Dir 1332.14  
(c) OSD MEMO 12 AUG 99  
(d) ASN (M&RA) MEMO 21 SEP 99,  
    16 DEC 99, 16 FEB 2000  
(e) DoD OGC Itr of 18 Aug 95  
(f) MILPERSMAN 1910-148  
(g) MARCORPSEPMAN, Chapter 6  
(h) MCO 1900.16 (series)  
(i) NAVADMIN, 291/99 and 094/00  
(j) MARADMIN 014/00 AND 025/00

**POLICY:** Don't Ask; Don't Tell; Don't Pursue; Don't Harass - Whether homosexual, bisexual, heterosexual.

**FOCUS:** Homosexual conduct, NOT sexual orientation, is a bar to service. Homosexual conduct includes both homosexual acts, statements by a member that he/she is homosexual or bisexual or words to that effect, and a homosexual marriage or an attempted homosexual marriage.

**SAFETY OF THE MEMBER:** When a member reports incidents or threats of harassment, the CO must take immediate steps to protect safety of the victim. Determine whether member should be moved within the command, transferred TAD, or if other security measures are warranted for the member's safety pending investigation and/or administrative processing. The fact that a person reported harassment is not enough, by itself, to initiate an investigation into the acts of the member. If information is uncovered during the investigation into the harassment that the reporter is homosexual or engaged in acts, CO must carefully consider the source and circumstances of the report. Before a CO orders an investigation, the CO **must** consult with the GCMCA SJA.

**INVESTIGATIONS:** NCIS will only investigate incidents that involve force, coercion, minor children, or where other serious criminal activity is involved. NCIS is precluded from investigating a consensual activity case. In these cases the command may initiate a "fact-finding inquiry" and assign the matter to a commissioned officer who should conduct the investigation with utmost discretion. However, if the CO suspects a member made a statement to avoid an obligation, deployment, obligated service, or payback for education, the CO may test the sincerity of the statement only by questioning the member, others who heard the statement, the member's immediate chain of command, and persons suggested by the member. Investigations beyond these limits require SECNAV authorization.

**REASONS FOR INITIATING AN INVESTIGATION:** Only the CO may initiate an investigation. Must have “credible information” that a reason for administrative processing exists (homosexual conduct). Rumors, suspicions, or mere associational activity such as patronizing a “gay bar,” or attending a homosexual rights rally, is not credible information. The decision to investigate must be based on factual information from a “reliable person.”

Once “credible info” inquiry is complete, the CO must determine whether inquiry establishes probable cause (reasonable belief) that one of the 3 things listed above (homosexual act / statement / or marriage) occurred. If the CO determines probable cause does exist, the CO shall initiate administrative separation.

**INTERVIEWING THE MEMBER, EXPLANATION OF POLICY:**

The investigating officer must advise and explain to the member the DoD Policy on homosexual conduct set forth in reference (b), including the mandatory processing consequences. Article 31(b), UCMJ rights should be afforded to anyone suspected of an offense (e.g., sodomy, conduct unbecoming, indecent acts, fraternization.) See **SUSPECTS – QUESTIONING**.

**INTERVIEWING THE MEMBER FOR ALLEGED CONDUCT:**

The member should not be asked, nor is the member required to reveal, whether he/she is a heterosexual, homosexual, or bisexual. The focus of the interview must be on their CONDUCT and NOT their “status” or sexual orientation. The investigating officer may ask if the member engaged in the homosexual CONDUCT at issue. The investigating officer “must be able to clearly and specifically explain which grounds for separation he/she is attempting to verify and how the information sought relates to the specific basis (es) at issue.” See **SUSPECTS – QUESTIONING**.

**INTERVIEWING THE MEMBER IN A “STATEMENTS CASE”:**

Reference (b) provided clarifying guidance confirming that the mere statement of homosexual orientation raises the rebuttable presumption that the member has the propensity to engage in homosexual acts. Reference (c) permits the IO to ask the member whether he/she has engaged in, attempts to engage in, or has the propensity to engage in homosexual acts. The member may also be asked why he/she made the statement and what he/she meant by the statement. See **SUSPECTS – QUESTIONING**.

**MANDATORY ADSEP PROCESSING FOR HOMOSEXUAL CONDUCT:**

Must initiate if CO determines that member engaged in or will engage in homosexual conduct. Mandatory processing does not equal mandatory separation. Member can rebut presumption of homosexual conduct or admin board may vote to retain. BUPERS and CMC or GCMCA (USMC) retain separation authority for enlisted, SECNAV for Officers. Request a Judge Advocate serve as recorder at any homosexual conduct admin board. See **ADMINISTRATIVE SEPARATION**.

**CHARACTERIZATION OF SERVICE:** Honorable, general, or entry level separation, unless there is a finding that member attempted, committed, or solicited a homosexual act involving force or coercion; with a subordinate; in public view; with someone under the age of 16; on a naval aircraft or vessel; or on board military property.

**COMMAND CLIMATE:** CO's must not condone jokes, epithets or derogatory comments in their command. When a member reports incidents or threats of harassment, the CO must take immediate steps to protect safety of victim. The fact that a person reported harassment is not enough, by itself, to initiate an investigation into the acts of the member. If information is uncovered during the investigation into the harassment that the reporter is homosexual or engaged in acts, CO must carefully consider the source and circumstances of the report.

Before a CO orders an investigation, the CO must consult with GCMCA or higher SJA. If CO suspects individual made a statement to avoid an obligation, deployment, obligated service, or payback for education, the CO must contact PERS 83 and seek permission to investigate.

**MENTAL HEALTH EVALUATIONS (MHEs)**

- REFERENCES:** (a) DoD Dir 6490.1  
(b) SECNAVINST 6320.24 (series)  
(c) MILPERSMAN 1910-122  
(d) MARCORSEPMAN 6203.3

**POLICY:** Members may only be referred to a mental health provider (MHP) for a MHE for legitimate mental health reasons, and not as reprisal. Members are entitled to exercise certain rights prior to such referrals. Do not refer a member for a MHE as a reprisal for making or preparing a lawful communication to a member of Congress, the chain of command, IG, or other appropriate person. Do not restrict a member from lawfully communicating with an IG, attorney, member of Congress, or other person about appropriateness of MHE referral. Violation of either of these principles may be punished under Art. 92, UCMJ.

**RULES:** References (a) and (b) provide guidance in referring a member for MHE. If appropriate, administratively process for separation IAW reference (c) and (d).

**REFERRALS EXEMPTED FROM MHE REQUIREMENTS INCLUDE:**

- Patient self-referrals.
- Referral to CAAC/DAPA, Family Advocacy.
- Referral to non-MHP for competence for duty exam.
- Referral as part of accession into a special community or duty.

**CO RESPONSIBILITIES PRIOR TO REFERRAL:**

- Provide member with a written notice of the referral. Sample notice provided in reference (b).
- Consult with Navy psychiatrist/psychologist Mental Health Professional (MHP)

**MEMBER'S RIGHTS UPON REFERRAL:**

- May not refuse MHE.
- May consult with a JAG for advice about redress.
- May submit allegation of improper referral to IG.
- May be evaluated by MHP of own choosing, if reasonably available.
- No person may restrict member's right to seek redress for referral.

- In situations other than emergencies, member shall have 2 business days before a MHE to meet with an attorney, IG, chaplain or other appropriate party.
- Prepare written memo documenting reasons for not complying and provide copies to member and MHP for inclusion in health record.

**EMERGENCY CIRCUMSTANCES:** If member is a “danger to self or others” referral may be made without prior consultation with MHP or written notice to the member.

**MEMBER’S RIGHTS IF INVOLUNTARILY ADMITTED:**

- Must be advised of nature, purpose and consequences of treatment.
- Right to contact friend, attorney, IG, or relative ASAP.
- Right to submit allegations to IG that MHE made as a reprisal.
- Right to evaluation within 24 hours to determine if continued hospitalization is justified.
- Right to notification of reasons for continued hospitalization.
- Right to have review within 72 hours by independent MHP appointed to determine appropriateness of continued hospitalization (right to attorney at the 72 hour review).

**MENTAL HEALTH PROFESSIONAL DUTIES:**

- Advise member of purpose, nature and likely consequences of MHE.
- Report improper MHE referrals to medical chain of command who will report same to offending officer’s superiors and the local IG.

**ALL ALLEGATIONS OF IMPROPER REFERRAL ARE INVESTIGATED BY NAVY IG AND REPORTED TO DOD IG.**

## **PREGNANCY**

- REFERENCES:** (a) SECNAVINST 1000.10  
 (b) OPNAVINST 6000.1 (series)  
 (c) MILPERSMAN 1740-020  
 (d) MILPERSMAN 1740-030  
 (e) MILPERSMAN 1910-112  
 (f) MCO 5000.12 (series)

**INITIAL COUNSELING RESPONSIBILITIES:** Once pregnancy is medically confirmed, the service member must be counseled regarding the Department of the Navy's pregnancy and parenthood policies, including dependent care plans, administrative separation options, and possible conflicts between parent role and the Service's "posture of readiness and mobility." References (a) and (b) and OPNAV 1740/1 for dependent care plans. Legal Assistance offices can provide counseling to members regarding paternity, blood testing, child support and other parenting issues. Pregnant members should be referred to a legal assistance office for this counseling if appropriate.

**ADMINISTRATIVE SEPARATION OPTIONS:** Members may voluntarily request ADSEP based on pregnancy. Member should request discharge prior to the 20th week of pregnancy. Generally requests will be denied unless in the best interests of the Service, or if member demonstrates overriding and compelling factors of personal need which warrant separation. After birth of the child, other bases for administrative separation may apply (e.g., hardship or parenthood).

**REQUIRED COUNSELING PRIOR TO SEPARATION:** Prior to separation the member must be counseled concerning limited maternity care benefits. Document the counseling on a Page 13 (USN) or Page 11 (USMC).

**WORK LIMITATIONS:** Detailed guidance is provided on management of pregnant servicewomen, including general duty limitations (i.e., exemptions from regular PT and the PRT, swim quals; parade rest or attention longer than 15 minutes; reduced exposure to unsafe chemical, toxic agents; after 28 weeks of pregnancy ensure member is allowed to rest 20 minutes every 4 hours (including in a chair with feet up); and limited 40 hour work week).

**CONVALESCENT LEAVE:** Six weeks authorized; extensions may be authorized by CO.

**SHIPBOARD CONSIDERATIONS:** Pregnant servicewomen MUST be transferred from the ship before the 20th week of pregnancy or date of deployment whichever is first. Pregnant on deployment: send member TAD to nearest military facility with OB/GYN care. "6 Hour Rule": Even when not deployed pregnant member cannot get underway if time required for medevac to emergency OB/GYN care exceeds 6 hours.

**EVACUATION OF PREGNANT MEMBERS:** If a non-combatant evacuation is ordered, all pregnant servicewomen who have reached the 20th week of pregnancy will be evacuated as "noncombatants." The area commander has authorization to direct evacuation of members who have not reached the 20th week upon the analysis set forth in reference (b).

**BREASTFEEDING:** Servicewomen may breastfeed infants during times allotted for meals and breaks.

**PRIORITY OB/GYN MEDICAL CARE:** Active duty servicewomen will be given priority for OB/GYN care in DON medical facilities. Active duty servicewomen assigned to deploying units or positions (within 3 months), will be given priority over all other active duty servicewomen. See reference (d).

**FOLLOW-ON TOURS:** A service member who was transferred from her unit due to pregnancy will be returned to the same ship or unit or to an equivalent billet in a command of the same duty type (e.g., shall complete sea tour).

See ADMINISTRATIVE SEPARATIONS and PATERNITY.

**RESERVISTS – SPECIAL CONSIDERATIONS**

- REFERENCES:** (a) UCMJ Arts. 2 & 3  
 (b) JAGMAN  
 (c) DoD Financial Management Regulation Part 7a,  
 481304  
 (d) MILPERSMAN 1001-020 through 1001-090  
 (e) MILPERSMAN 1620-020, 1811-010, 1820-010  
 (f) MILPERSMAN 1830-010 through 1830-070  
 (g) MILPERSMAN 1916-010  
 (h) BUPERSINST 1001.39 (series)  
 (i) DoD 5500.7-R (JER)  
 (j) DoDD 1344.109

**COURT-MARTIAL AND NJP JURISDICTION:** Per reference (a), reservists are subject to UCMJ jurisdiction if they commit an offense while on active duty or inactive duty for training. They may be recalled to active duty for purposes of trial by court-martial. Order must be issued by GCMCA.

**COURT-MARTIAL AND NJP PUNISHMENTS:** See reference (c) regarding application of NJP forfeitures. See sections 0112, 0123, 0134 of reference (b) for application of restraints on liberty. Normally, reservist may not be extended on active duty to serve punishment unless authorized by SECNAV. May be carried over to next duty period.

**ADMINISTRATIVE SEPARATIONS:** Generally, procedures are the same as for active duty personnel. Notable exceptions include: inactive reservists have 30 days to respond to notification of processing; admin boards for all reservists must have at least one reserve commissioned officer as a member and all members must be commissioned officers if an OTH discharge is possible; and SECNAV is the separation authority for any reservist within 2 years of eligibility for retired or positive shortly after beginning IDT, IDTT, ADT, or AT are not retainer pay.

**URINALYSIS:** Normally, reservists who test subject to disciplinary action (without other evidence of drug use in an active status), but are subject to administrative processing.

**INJURIES, ILLNESSES & DISEASES:** Upon learning that a reservist (on duty for less than 31 days) has incurred or aggravated an injury, illness, or disease on AT, ADT, IDT, IDTT, or traveling to or from such duty, commanders must immediately notify COMNAVRESFOR 003 and forward an interim LOD/Misconduct determination within 7 days. See JAGMAN, Section 0231 regarding investigations into death and/or injury of reservists.

**ETHICS:** Inactive reservists may use their military titles in commercial enterprises if their retired or inactive status is clearly indicated and such use does not discredit DoD or give the appearance of DoD approval. See section 2-304 of reference (d). As for political activities, inactive reservists are generally subject to the same restrictions as DoD civilian employees under the amended Hatch Act, not those governing active duty personnel. They may not generally hold federal, state, or local civil office if activated to active duty for more than 270 days. See sections 6-200 and 6-300 of reference (d), and reference (j).

**REDCOM SJAs:** Each of the Naval Reserve Readiness Commands has a Staff Judge Advocate, who is the initial contact for legal inquiries about reservists within the geographical region.

**SUICIDES, ATTEMPTS & GESTURES/CACO**

**REFERENCES:** (a) MILPERSMAN 1770-010  
(b) JAGMAN, Section 0225  
(c) SECNAVINST 6320.24 (series)

**ACTUAL SUICIDE:** Line of Duty/Misconduct determinations are required in all death cases, See *DEATH INVESTIGATIONS*.

**PERSONNEL CASUALTY REPORTS:** Required for any suicide, and also for any case where a member attempts suicide or makes other suicide gestures. See reference (a) for guidance.

**NCIS NOTIFICATION:** With limited exceptions (e.g. combat death), notify NCIS when a service member dies, regardless if he/she was on leave or not at the time of the death. Be sure to consider removal of classified information, if applicable.

**LINE OF DUTY/MISCONDUCT DETERMINATIONS:** In suicide attempt or gesture cases, where there is a permanent disability or physical inability to perform duties in excess of 24 hours, a determination is required. Convene a JAGMAN investigation (normally Command Investigation). Keep in mind that next of kin will be entitled under federal law to a copy of the investigation.

- In the case of suicide gestures (an intentional infliction of injury without serious suicidal intent), the likely outcome will be that the member was "not in the line of duty" and "the injury was due to own misconduct."
- In the case of a true suicide attempt, there is a strong inference that the member lacked mental responsibility. Therefore, the likely outcome will be that the member was "in the line of duty" and "the injury was not due to own misconduct."

**MENTAL HEALTH EVALUATIONS:** Members who express suicidal ideations should be immediately referred to DoD mental health professionals. This may be considered an emergency situation under appropriate circumstances for purposes of reference (d). See *MENTAL HEALTH EVALUATIONS*.

**CASUALTY ASSISTANCE CALLS OFFICER (CACO):** Be sure to contact your CACO regional coordinator (Navy Regional Commander, etc.), with regard to any question involving the death of any active duty service member.

## **FROCKING OF COMMISSIONED OFFICERS**

**REFERENCES:** (a) DoD Directive 1334.2  
(b) SECNAVINST 1420.2  
(c) MCO P1400.31 (series) (MARCORPOMMAN, VOL. 1)

**GENERAL:** Promotions to the grades of major and above require: nomination by the President, consent of the Senate, and appointment by the President. Frocking is intended to ameliorate the effects of delay between Senate confirmation and appointment by the President. An officer is not legally promoted until all three steps have occurred. However, frocking is authorized under the limitations and requirements of references (a) through (c). Since specific requirements exist based on the "frocked grade," careful consideration is necessary to ensure the frocking is authorized.

**DOD POLICY:** Reference (a) establishes policy, standards, and procedures governing the frocking of commissioned officers to the grades O-4 through O-10. Generally:

- Frocking must be essential to the officer's maximum effectiveness in the assigned billet;
- Before an officer can be frocked, the officer must have been: (1) nominated by the President; and (2) received the consent of the Senate.
- The officer being considered for frocking must be serving in a billet for which the frocked grade is designated, or must be in the process of being ordered to such a billet. Reference (a) and (b) establish priority for the following billet assignment: joint duty, international environment, command, or other staff assignments.

**FROCKING LIMITATIONS:** Reference (c) establishes requirements for all frocking requests. A frocked officer is entitled to "wear the insignia" and to "assume the title" of the next higher grade. However, the frocking is not a promotion, and until the actual promotions, the officer does NOT:

- Receive any pay allowances, or entitlements of the frocked grade;
- Accumulate time in grade, gain seniority on the active duty list or gain seniority for any other purpose;
- Assume the legal authority of the higher grade. (Frocked officers are not authorized increased disciplinary powers under Article 15, UCMJ.)

**USMC FROCKING:**

**Above the grade of Colonel:** Secretary of Defense.

**Major through Colonel:** Director, Personnel Management Division

**1stLt to Captain:** Commanding Generals based on criteria specified in paragraph 6007 of reference (b).

**2ndLt to 1stLt:** Not authorized.

**USMC FITNESS REPORTS:** A grade change (GC) fitness report must be completed on frocked officers.

**USMC DEFROCKING:** Paragraph 6007.6 of reference (b), provides that an officer's frocking may be rescinded prior to the time of actual promotion is effected if it is determined that potential adverse information exists. In such instances, the Manpower Management Division, Promotions Section (MMPR) and the Judge Advocate Division (CMC (JAM)) must be notified for further guidance.

**Section VI: SEXUAL HARASSMENT, FRATERNIZATION & HAZING  
SEXUAL HARASSMENT PREVENTION**

- REFERENCES:** (a) SECNAVINST 5300.26 (series)  
(b) OPNAVINST 5354.1 (series)  
(c) SECNAVINST 5354.1 (series)  
(d) ARTICLE 1166, U.S. Navy Regulations, 1990  
(e) NAVPERS 15620 Informal Resolution System  
(f) MCO P5354.1 (series)  
(g) MCO 1000.9 (series)  
(h) USMC "Processing EO & EEO Complaints,  
"A Commander's Handbook"

**RESOURCES:** Navy Personnel Command:  
<http://www.npc.navy.mil/CommandSupport/Diversity/EqualOpportunity/>

**BOTTOM LINE:** Don't ignore or condone sexual harassment.

**EDUCATION AND TRAINING FOR ALL HANDS:** Regularly emphasize and discuss DON Sexual Harassment policies. Set the tone for the command environment:

Publish a command policy statement outlining the command's stance on sexual harassment.

Utilize the POD/POW to promote the Navy's zero tolerance sexual harassment policy. Periodically publish and place on command bulletin boards information concerning command EO/EEO counselors, a member's right to submit a formal or informal grievance, and the availability of legal advice.

**COMMAND DISPLAYS:**

**Navy:** Prominently display the grievance poster, Equal Opportunity Information Poster (NAVPERS 15600C, NSN: 0500-LP-102-6629)

Publish a command policy statement regarding EO (which includes sexual harassment). Encourage the use of the Equal Opportunity and Sexual Harassment Advice Line, 1-800-253-0931, DSN 882-2507, Comm (901) 874-2507; eo/sh.advice.line@persnet.navy.mil.

**USMC:** Ensure NAVMC 2921, "Marine Corps Procedures for Processing of Discrimination / Sexual Harassment Complaints for Military Personnel," is prominently displayed on a permanent basis within the command.

Manpower Equal Opportunity, DSN 278-9371

or commercial (703) 784-9371 or the Equal Opportunity Sexual Harassment Advice Line, 1-800-253-0931, DSN 882-2507.

**ANNUAL TRAINING:** Ensure all hands receive annual GMT and Navy Rights and Responsibilities training (within 90 days of reporting to command, where practicable and annually thereafter).

As an alternative to the normal chain of command, military and civilian personnel may lodge complaints to the Naval Inspector General at 1-800-522-3451 or the Inspector General of the Marine Corps, DSN 224-1348/49 or commercial (703) 614-1348/49.

**PROMULGATE AN “INTERPERSONAL RELATIONSHIP” and/or “DATING POLICY”:** See *FRATERNIZATION PREVENTION*.

**EMPHASIZE POSITIVE ASPECTS OF EARLY REPORTING AND INFORMAL RESOLUTION:** Encourage command use of the Informal Resolution System prior to the filing of a formal complaint. [See reference (e)]. Process formal complaints in accordance with the timelines in references (b) (USN) and (f) (USMC).

**COMMAND ASSESSMENT:** Ensure command conducts the annual assessment to include sexual harassment issues. [See references (a)-(c) (USN) and (f) (USMC)].

See also **SEXUAL HARASSMENT INCIDENT**

## SEXUAL HARASSMENT INCIDENT

- REFERENCES:** (a) SECNAVINST 5300.26 (series)  
(b) OPNAVINST 5354.1 (series)  
(c) Article 1166, U.S. Navy Regulations  
(d) NAVPERS 5354/2 Formal Complaint Form  
(e) NAVPERS 15620 Informal Resolution System  
(f) MCO P5354.1 (series)  
(g) MILPERSMAN 1910-233  
(h) MCO P1900.16 (series)  
(i) MARCORSEPMAN 6210

### POTENTIAL REPORTING REQUIREMENTS:

- OPREP-3 NAVY BLUE for major incidents. OPREP-3 Unit SITREPS for minor incidents.
- Major criminal *REPORTING* offenses to NCIS. See *NCIS INCIDENT REPORTING*
- Violent crime message. See *VIOLENT CRIME REPORTING*.
- Incidents involving sexual assaults. See *VICTIM/WITNESS*.
- Incidents involving officers IAW TYCOM/ECHELON II requirements. See *OFFICER MISCONDUCT*.

**WHAT IS SEXUAL HARASSMENT?** Sexual harassment is unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (1) made a term or condition of a person's job, pay, or career; (2) used as a basis for a job decision affecting that person; or, (3) interferes with an individual's work performance or creates a hostile or offensive working environment. Sexual harassment is a gender neutral concept.

**INFORMAL RESOLUTION:** Encourage command use of the Informal Resolution System prior to the filing of a formal complaint. See reference (e).

**FORMAL COMPLAINT:** Use reference (d) "Formal Complaint Form".

**INVESTIGATIVE REQUIREMENTS:** All formal complaints of sexual harassment will be processed according to the following procedures:

- **Within 24 hours** of receipt of the complaint at the alleged offender's command, the complaint must be presented to the Commanding Officer.
- **Within 72 hours:**
  - Initiate an investigation after receipt of the complaint. Advise the GCMCA via OPREP-3 Unit SITREP (OPREP-3 NAVY BLUE for major incidents) with an info copy to NAVPERSCOM (PERS-661) and your Echelon II command. Marine personnel shall notify the GCMCA that a complaint has been received and make every effort to initiate investigation within 72 hours.

- Assign personal advocates to the complainant, alleged offender, and all primary witnesses.

- **Within 14 days:**

- Complete investigation, or file a progress report **within 20 days** of commencement and every 14 days thereafter. File a final report with the GCMCA, including the results of the investigation and whether or not any administrative or disciplinary action was taken (if disciplinary action was taken, the actual punishment awarded should not be placed in the message). See references (b), (d), and (h).

**PREVENT REPRISALS:** Remove the alleged perpetrator from the work space if there is reasonable possibility of further sexual harassment or reprisal.

**COMPLAINANT/VICTIM ASSISTANCE:** See *VICTIM/WITNESS*.

**PRIVACY ACT CONSIDERATIONS:** Maintain the confidentiality of all parties involved. See *PRIVACY ACT*.

**MENTAL HEALTH EVALUATION:** Do not order psychiatric evaluation of the complainant or alleged perpetrator unless the requirements of the DoD mental health instruction have been met. See *MENTAL HEALTH EVALUATION*.

**LEVEL OF INVESTIGATION:** CO's determination based on seriousness and magnitude of incident. Ensure investigating officer is neutral and qualified. Consider outside investigator if command investigation would have appearance of being partial to either complainant or alleged perpetrator. Coordinate all efforts with the command legal advisor. If complainant and alleged offender are from different commands, the CO of the alleged offender has the responsibility to conduct the investigation.

**DISCIPLINARY OR ADMINISTRATIVE ACTION:** Take timely and tailored action when appropriate. Focus remedies on solving the problem. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.

### **MANDATORY ADMINISTRATIVE DISCHARGE PROCESSING:**

Per reference (g), separation processing is mandatory if the sexual harassment involves:

- Actions, threats or attempts to influence another's career or job in exchange for sexual favors; or
- Physical contact of a sexual nature which, if charged violation of the UCMJ, could result in a punitive discharge. *ADMINISTRATIVE SEPARATIONS.*

## ***FRATERNIZATION PREVENTION***

**REFERENCES:** (a) OPNAVINST 5370.2 (series)  
 (b) Marine Corps Manual 1100.4  
 (c) Article 1165, U.S. Navy Regulations  
 (d) UCMJ, Article 134

**EDUCATION AND TRAINING FOR ALL HANDS:** Regularly emphasize and discuss the DON fraternization policy:

- Ensure personnel are attending the Navy Rights & Responsibility workshops upon reporting to the command.
- Ensure all hands are receiving annual GMT.

**PROMULGATE A COMMAND “INTERPERSONAL RELATIONSHIPS”**

**POLICY:** A Judge Advocate should review prior to issuance. Examples of items that may be covered:

- Relationships between crew members/personnel in the same work center or command. May strongly discourage, but should not establish a blanket “no dating” policy between all members unless it otherwise violates Navy prohibitions against fraternization. For example, after hours dating between two E-3s in different work centers should generally be permitted.
- Intimate conduct/public displays of affection on board a ship/military installation or while in uniform.
- Appropriate civilian attire on board ships and military installations.
- Entering berthing areas/heads/personal living male/female personnel of opposite sex.
- Appropriate language on board ships and military installations.
- Private business partnerships between command members.

**COMMAND ASSESSMENT:** Ensure the command assessment team (CAT) conducts an annual assessment that includes fraternization. [See OPNAVINST 5354.1 (series)]

**MULTI-SERVICE COMMAND:** Must develop a policy consistent with the different service regulations and ensure all personnel within the command understand the policy.

**See also FRATERNIZATION INCIDENT**

## ***FRATERNIZATION INCIDENT***

**REFERENCES:** (a) OPNAVINST 5370.2 (series)  
(b) Marine Corps Manual 1100.4  
(c) Article 1165, U.S. Navy Regulations  
(d) UCMJ, Article 134

**BACKGROUND:** Unduly familiar personal relationships between seniors and subordinates are contrary to Naval custom because they undermine the respect for authority that is essential to the Naval Service's ability to accomplish its mission. Fraternization is prohibited and punishable under the UCMJ. Being in a direct senior-subordinate supervisory relationship or in the same chain-of command is not a prerequisite for fraternization.

**PROHIBITED RELATIONSHIPS (immediately presumed to be prejudicial to good order and discipline):**

**Officer/Enlisted:** Personal relationships between officer and enlisted members that are unduly familiar and that do not respect differences in grade or rank. (USN and USMC)

**Chief Petty Officer/Junior Enlisted:** Personal relationships between chief petty officers and junior personnel (E-1 to E-6), who are assigned to the same command, that are unduly familiar and that do not respect the differences between grade or rank. (USN)

**E-1 to E-6 Enlisted Members of Different Pay Grades:** Personal relationships between two enlisted members, both of which are in pay grade E-1 to E-6, are prohibited if:

- They are unduly familiar to the extent they do not respect differences in pay grade, AND
- Are prejudicial to good order & discipline

**Between officers:** Same as for E-1 to E-6 Enlisted Members of Different Pay Grades.

**Staff and Instructor/Student Personnel:** Personal relationships between staff or instructor members and student personnel within training commands that do not respect differences in grade, rank, or the staff/student relationship.

**Recruiter/Recruit and Applicant:** Personal relationships between recruiters and recruits or applicants that do not respect special relationship between them. Such relationships are prejudicial to good order and discipline. For USMC, these relationships are strictly prohibited in the USMC by references (f) and (g).

**WHAT IS UNDULY FAMILIAR?** All other relationships may be prejudicial to good order and discipline. Examples include:

Dating, shared living accommodations, intimate or sexual relations, commercial solicitations, private business partnerships, gambling, and borrowing money when they are prejudicial to good order and discipline, or of a nature to bring discredit on the Naval service.

**WHAT IS “PREJUDICIAL TO GOOD ORDER & DISCIPLINE”?** Exists when the relationship results in circumstances which:  
~ calls into question the senior member's objectivity;  
~ results in actual or apparent preferential treatment;  
~ undermines the authority of a senior member; or  
~ compromises the chain of command.

**RELATIONSHIPS WITH MEMBERS OF OTHER SERVICES:** The policy applies to all prohibited relationships between Navy members and other members, regardless of service. Multi-service commands must create clear policies because of differences in service regulations.

**GENDER-NEUTRAL:** The focus is on the detriment to good order and discipline, not the sex of the parties.

**SUBSEQUENT MARRIAGE:** Does not excuse or mitigate.

**MARRIED MEMBERS:** Will not be assigned to the same chain of command (compatible with needs of the Navy/Marine Corps).

**RESPONSIBILITY FOR PREVENTION:** Rests primarily on the senior. However, both members are accountable for their own conduct.

**ADMINISTRATIVE OR DISCIPLINARY OPTIONS:** Investigate allegations and take appropriate administrative or disciplinary action. See Appendix F: *Fraternization Investigation Chart* and **ADMINISTRATIVE & DISCIPLINARY OPTIONS**.

## **HAZING PREVENTION/INCIDENT**

- REFERENCES:** (a) SECNAVINST 1610.2 (series)  
(b) OPNAVINST 3100.6 (series)  
(c) MCO 1700.28 (series)  
(d) OPNAVINST 3120.32, para. 510.36  
(e) SECDEF Memo of 28 Aug 1997  
(f) ALMAR 045/03

**COMMAND POLICY:** Must be regularly emphasized to all hands.

**PREVENTION:** Requires continuous education and awareness from command leadership. Use the definition and specific examples below. The listing is not all inclusive and other known examples should be added to the list.

**HAZING DEFINITION:** Hazing is defined as any conduct whereby a military member or members, regardless of service or rank, without proper authority causes another military member or members, regardless of service or rank, to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to perpetrate any such activity is also considered hazing. Hazing need not involve physical contact among or between military members; it can be verbal or psychological in nature. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator. Whether an individual consents or volunteers is immaterial; no service member may consent to acts of hazing being committed upon them.

### **SPECIFIC EXAMPLES THAT ARE CLEARLY PROHIBITED:**

“Tacking on” promotions or warfare pins; initiations that have not been approved and are unsupervised by the chain of command; handcuffing members to fixed or movable objects; taping or tying member’s arms or legs; forced/non-consensual cutting or shaving of hair; forced or non-consensual removal of clothing; “red bellies”; placing or pouring a liquid substance or foreign substance (i.e. grease or shoe polish) on a person or their property; requiring a person to consume substances or food not normally prepared or suitable for consumption; sabotaging personal property of another to cause even minor injury or damage; any horseplay or minor assault upon the person of another; or any other act that could even remotely subject a person to injury, ridicule, or degradation.

**HAZING DOES NOT INCLUDE:** Command-authorized or operational activities; the requisite training to prepare for such missions or operations; administrative corrective measures; extra military instruction; athletics events, command-authorized physical training, contests or competitions; and other similar activities that are authorized by the chain of command.

**INITIATIONS AND SPECIAL CEREMONIES:** Must be approved by the chain of command. Specific guidance is contained in reference (d):

CO or his/her direct representative shall personally be involved in planning or execution.

Glamorization of alcohol and alcohol abuse by event participants and guests shall not be tolerated.

Sexually suggestive activities, props, costumes, skits, gags, or gifts are prohibited.

Personal, ethnic, and religious beliefs of those in attendance shall be respected.

There will be no coercion of Navy members to participate. Any participation by principals or guests shall be strictly voluntary.

Proper medical screening of participants (when appropriate) and compliance with applicable health, safety, and environmental regulations shall be part of event planning.

**INVESTIGATION:** Must investigate within 24 hours of incident. SITREP every 30 days until final action taken.

**REPORTING REQUIREMENTS:** Substantiated incidents of hazing must be reported via OPREP-3 NAVY BLUE to CNO or CMC. See references (a), (b), and (c).

**DISCIPLINARY OR ADMINISTRATIVE ACTION:** Take timely and tailored action as appropriate.

## **Section VII: CORRESPONDENCE ISSUES; FREEDOM OF EXPRESSION AND GRIEVANCE PROCEDURES**

### **FREEDOM OF EXPRESSION**

**REFERENCES:** (a) DoD Dir 1325.6

- (b) SECNAVINST 5720.44 (series)
- (c) DoD Dir 1300.17
- (d) SECNAVINST 1730.7 (series)
- (e) DOD Inst 4105.70
- (f) OPNAVINST/MCO 1620.2 (series)
- (g) DoD Dir 1344.10
- (h) NAVADMIN 110/06(i) MARADMIN 198/07

**CO'S BALANCING TEST:** Constitutional rights involving freedom of expression should be preserved to maximum extent possible, consistent with mission accomplishment, security and good order and discipline. See Reference (a)

**NO CONTEMPTUOUS WORDS:** Article 88 UCMJ prohibits officers from being disrespectful to senior governmental leaders (i.e. President, Vice President, Congress, SECDEF, SECNAV, SECARMY, SECUSAF, etc...).

### **PORNOGRAPHY:**

Private possession cannot be prohibited (except child pornography).

Display and distribution can be controlled.

Contact SJA for questions concerning sales at NEX, MCX, or ship stores. CO can prohibit sale of pornography aboard ship.

**HANDBILLS, POSTERS, LEAFLETS, NEWSLETTERS, PAPERS, NOTICES:** CO can and should require prior approval before distribution. Apply the balancing test stated above and rule of equal treatment.

**MANDATORY PAO/SECURITY REVIEW:** Required for any publication written by military member that "pertains to military matters." See reference (b).

**ON-BASE "GATHERINGS":** Shall be prohibited if clear danger to loyalty, morale, good order and discipline or interference with mission accomplishment. Apply the rule of equal treatment.

**OFF-BASE "GATHERINGS":** Attendance may be prohibited if:

The service member is on duty,

In a foreign country, in a gathering where the march is illegal, or  
If violence is likely at the gathering

Moreover, a service member may be prohibited from wearing a uniform at the gathering.

**OFF-LIMITS:** A CO may declare places temporarily “off-limits” **in emergencies** until the Armed Forces Disciplinary Control Board (AFDCB) or Area Coordinator can act. Reasons for declaring places off limits: clear danger to loyalty, morale, good order and discipline; interference with mission accomplishment; adverse effect upon health, safety, welfare or morals; or engages in discriminatory practices. Overseas, a CO has much greater discretion to place areas off-limits, checking with ISIC if intent is to place permanently off-limits.

**NO MILITARY UNIONS, STRIKES SLOWDOWNS, OR PICKETING.** (See Reference (g)).

**MEMBERSHIP IN SUPREMATIC OR EXTREMIST GROUPS:**

“Active” participation in such organizations or conduct is prohibited. Active participation includes: publicly demonstrating or rallying, fundraising, recruiting and training members, organizing or leading such organizations, or otherwise engaging in activities in furtherance of such organizations that are viewed by command to be detrimental to good order, discipline, or mission accomplishment. Mandatory processing for substantiated cases. See *ADMINISTRATIVE SEPARATIONS*.

**RIGHTS TO PETITION FOR REDRESS OF GRIEVANCES:** See *REQUEST MAST/ARTICLE 138 COMPLAINT and CONGRESSIONAL INQUIRIES*.

**RELIGION:** Policy is to accommodate practice of religion to the greatest extent possible. See reference (d).

See *POLITICAL ACTIVITIES*.

**TATTOO POLICY: USN:**

- No tattoos on face, neck, scalp, head
- Everywhere else:
  - Prejudicial to good order/disc or service discrediting – prohibited (sexually explicit, discrimination due to ethnicity, nat'l origin, gender, racial, or religious)
  - Supremacist or gang-related – prohibited

**USMC:**

- No tattoos on head or neck
- No “sleeve tattoos” (covers/almost covers entire arm or leg)
- No “half-sleeve” or “quarter-sleeve” tattoos (covers/almost covers above or below elbow or knee) visible to the eye when wearing standard PT gear
- No service discrediting tattoos – sexist, racist, vulgar, anti-American, anti-social, gang-related, or extremist group

Member may be “grandfathered” in if tattoo acquired prior to promulgation of policy, but ensure page 11/13 entry is made. See references (h) and (i) for more guidance.

## **REQUEST MAST/REDRESS OF WRONGS/ART. 138 UCMJ**

- REFERENCES:** (a) Navy Regulations, Articles 1150, 1156  
(b) UCMJ, Article 138  
(c) JAGMAN, Chapter III  
(d) MCO 1700.23 (series)  
(e) NAVMC Directive 1700.23 (series)

**REQUEST MAST:** Members of the Naval service have the right to communicate directly with the CO at a proper time and place determined by the CO. No one may force a member to reveal matter they wish to discuss privately with CO.

CO's should encourage Request Mast in order to resolve matters at the lowest level. Once a chit for request mast is submitted, all levels of the Chain of Command should work to resolve the problem. Only the individual submitting the chit may withdraw the chit. If withdrawn, the reason should be documented and preserved.

Request Mast is an individual right. Navy Regulation Article 1153 prohibits members from joining together to protest or complain.

USMC: A Marine may request mast with any officer in his chain of command up to the Commanding General.

### **NAVY REGULATIONS ARTICLE 1150 – REDRESS OF WRONGS:**

Formal complaint that may be filed against any superior. (Complaints against the CO are filed under Article 138 after the complainant has requested redress from the CO).

If the superior is in the same chain of command, the CO should handle through Request Mast procedures. If the matter is resolved no report to higher authority is required. If the complainant considers the resolution unjust the complainant may file an Article 138 complaint against the CO.

If the superior is not in the same chain of command, the complaint shall be forwarded via the complainant's CO, the respondent, the respondent's CO, to the officer exercising GCMCA over the respondent. The GCMCA is required to inquire into the matter.

**UCMJ ARTICLE 138 COMPLAINTS:** See JAGMAN, Chapter III.

Made against a CO after a request for redress has been denied. Member has 90 days to submit complaint after discovery of alleged wrong.

Must be endorsed and forwarded within 30 days to the officer exercising GCMCA over the CO and, after investigation (regardless of resolution), must be forwarded to SECNAV. Normally forwarded via the complainant.

A complainant may withdraw a complaint at any time but it must be in writing and forwarded up the chain of command if the complaint has already been forwarded. If the complaint has not been endorsed or forwarded the CO should document and preserve the withdrawal.

**CHECKLIST FOR GCMCA REVIEW OF ARTICLE 138 COMPLAINTS:**

See Appendix G.

## **HOTLINE COMPLAINTS & WHISTLEBLOWER PROTECTION ACT**

- REFERENCES:** (a) SECNAVINST 5370.5 (series)  
(b) SECNAVINST 5370.7 (series)  
(c) DOD Directive 7050.06  
(d) MCO 5041.1

**DOD FRAUD, WASTE, AND ABUSE HOTLINE (1-800-424-9098).**  
Navy IG (1-800-522-3451) is the “eyes and ears” of SECNAV, CNO and CMC.

Echelon II Commanders are responsible for written internal procedures for processing hotline referrals at appropriate levels within chain of command.

Mandatory requirement to post information on Navy/DoD Hotline programs on command bulletin boards, per reference (a).

Encourage and support reporting of fraud, waste and abuse throughout all levels of command; military and civilian.

**INVESTIGATION PROCEDURES:** If command is tasked with conducting an investigation, CO must ensure standards of independence, completeness, timeliness and accountability are met.

Assign impartial investigator, outside and independent of the operation specified in the complaint.

Reports cannot raise unanswered questions.

IG due date in tasking letter must be met.

Take proportionate remedial measures in form of disciplinary/administrative/educational action if needed to correct deficiency.

Retain EVERYTHING (notes, papers, files) for 2 years.

Use Navy IG Investigations Manual or Marine Corps IG Assistance and Investigations Manual as a guide for investigation.

Confidentiality of informant is a must.

NO REPRISAL can ever be taken against a known/suspected informant.

**WHISTLEBLOWER PROTECTION ACT:** Prohibits reprisal or taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold any favorable personnel action, because a member makes or prepares to make a lawful communication to a member of Congress, an IG, or any other person designated by regulations or established administrative procedures for such communications. 10 U.S.C. 1034.

Contents of reference (b) MUST be published on command bulletin boards.

Violation of the Act is a crime punishable under the UCMJ and a basis for disciplinary action against civilian employees.

See *MENTAL HEALTH EVALUATIONS*.

## **CONGRESSIONAL INQUIRIES**

- REFERENCES:** (a) MILPERSMAN 5216-010  
(b) SECNAVINST 5216.5 (series)  
(c) Navy Regulations, Article 1155  
(d) SECNAVINST 5730.5 (series)

**RIGHT TO COMMUNICATE:** No person may restrict any member from communicating with Congress in the member's personal or private capacity.

**PROTECTION FOR "WHISTLEBLOWERS":** See *HOTLINE COMPLAINTS & WHISTLEBLOWER PROTECTION ACT*.

**PSYCHIATRIC EVALUATION:** Do not refer a member for a mental health evaluation as reprisal for initiating a Congressional inquiry. See *MENTAL HEALTH EVALUATIONS*.

**PRIVACY ACT CONCERN:** Ensure that any personal information about a member included in the response is releasable information.

### **CORRESPONDENCE:**

Each Congressional inquiry should receive a prompt, courteous, and complete reply.

The reply should be correct even though the nature of the reply may be unfavorable.

A final or interim reply must be sent within five (5) workdays of receipt.

USN: The final reply and substantive interim replies are sent to PERS-3L with copies to the Office of Legislative Affairs. USMC: All Congressional Inquiries should be immediately forwarded by fax to the Office of Legislative Affairs (OLA(C)),  
(703) 614-4172/4768 or DSN 224-xxxx.

**INFORMING CHAIN OF COMMAND:** Check Senior Command and local instructions for reporting requirements and requirements for providing copies of responses.

## ***EO PREVENTIVE MEASURES***

- REFERENCES:** (a) SECNAVINST 5350.16 (series)  
 (b) OPNAVINST 5354.1 (series)  
 (c) OPNAVINST 3100.6  
 (f) USMC "Processing EO & EEO Complaints,  
*A Commander's Handbook*"  
 (g) MCO P5354.1 (series)  
 (h) MCO P5354.3 (series)

**EDUCATION AND TRAINING FOR ALL HANDS:** Regularly emphasize and discuss the DON EO policies. Set the tone for the command environment on Equal Opportunity:

Publish a command policy statement on EO.

Utilize the POD/POW to promote the Navy's EO program.

Periodically publish and place on command bulletin boards information concerning command EO/EEO counselors, a member's right to submit a formal or informal grievance and the availability of legal advice.

Prominently display the Equal Opportunity Information Poster (NAVPERS 15600C, NSN: 0500-LP-102-6629)

Encourage the use of the Equal Opportunity and Sexual Harassment Advice Line, 1-800-2530931, DSN 882-2507, Comm (901) 874-2507; eo/sh.advice.line@persnet.navy.mil.

Ensure Navy Rights and Responsibilities Workshops or Marine Corps Annual Equal Opportunity Training Sessions are conducted and attended.

### **EMPHASIZE POSITIVE ASPECTS OF EARLY REPORTING AND INFORMAL RESOLUTION.**

**PROACTIVE TEAM:** Executive Officer, Command Senior Enlisted Advisor, Equal Opportunity Specialist (EOPS), Command Managed Equal Opportunity Officer (CMEO), Command Assessment Team Members and Legal Advisor are all key players. Empower them and discuss the issues with them frequently.

**COMMAND ASSESSMENT:** Command Assessment Team required to conduct annually (see reference (g)), and within 90 days of assuming command. CO's are free to conduct one any other time when deemed necessary.

**FITREP/EVALS:** Establish meaningful, measurable EO/EEO performance objectives for fitness reports and evaluations.

**RECOGNITION:** Provide special recognition or awards for units/personnel demonstrating superior accomplishments in EO/EEO.

**EQUAL OPPORTUNITY (EO) INCIDENT.** Evaluate incident as minor or serious: See Appendix D.

**POTENTIAL REPORTING REQUIREMENTS:**

OPREP-3 NAVY BLUE for serious incidents. OPREP-3 Unit SITREPS for minor incidents.

Major criminal offenses to NCIS. See *NCIS INCIDENT REPORTING*.

Violent crime message. See *VIOLENT CRIME REPORTING*.

Incidents involving Sexual Harassment. See *SEXUAL HARASSMENT*.

Incidents involving sexual assaults. See *VICTIM/WITNESS*.

Incidents involving officers IAW with TYCOM/Echelon II requirements. See *OFFICER MISCONDUCT*.

**INVOLVE THE EOPS/CMEO or EDR/EDA OFFICER/COMMAND LEGAL ADVISOR IMMEDIATELY.**

**PREVENT REPRISALS:** Remove the alleged perpetrator from the workspace if reprisal or recurrence is likely.

**PRIVACY ACT CONSIDERATIONS:** Maintain the confidentiality of all parties involved.

**COMPLAINANT/VICTIM ASSISTANCE:** Provide complainant with victim counseling support or referral services at the outset. Monitor and provide follow-up services as required. See *VICTIM/WITNESS ISSUES*. Provide feedback to complainant within a reasonable time. Consider appointing a personal advocate to assist the complainant IAW reference (b) & (h).

**MENTAL HEALTH EVALUATION:** Do not order psychiatric evaluation of the complainant or alleged offender as reprisal. See *MENTAL HEALTH EVALUATIONS*.

**INFORMAL RESOLUTION:** Encourage use of the Informal Resolution System prior to the filing of a formal complaint.

**INVESTIGATION:** Ensure investigating officer is neutral and qualified. Consider outside investigator if investigation would have appearance of being partial to either complainant or alleged offender. Coordinate all efforts with the command legal advisor.

**DISCIPLINARY OR ADMINISTRATIVE ACTION:** Take timely and tailored action when appropriate. Focus remedies on solving the problem. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.

## **FREEDOM OF INFORMATION ACT (FOIA)**

- REFERENCES:** (a) JAGMAN, Chapter V  
(b) SECNAVINST 5720.42 (series)  
(c) SECNAVINST 5820.8 (series)  
(e) 32 CFR part 701  
(d) 5 USC § 552

**RESOURCES:** Navy FOIA online [www.foia.navy.mil] USMC FOIA Online [http://hqinet001.hqmc.usmc.mil/FOIA/index.htm]

**ACCESS TO RECORDS:** FOIA gives all persons (including foreign citizens and governments) a right to access Government "agency records" unless such records are specifically exempted from disclosure. Records includes information maintained in an electronic format. Requestors of information must indicate that they are seeking information pursuant to FOIA.

**EXEMPTIONS:** If you have any question over whether a record must be released, forward the FOIA request and the documents in issue to the Initial Denial Authority (IDA). Some of the specific exemptions under FOIA include:

Classified information

Purely internal rules and procedures.

Memos containing internal advice and recommendations.

Records which contain personal and private information (e.g., medical and service records; mailing lists containing names and/or addresses of military personnel or employees, regardless of their duties, of the Department of Defense, etc...).

Law enforcement records.

**INITIAL DENIAL AUTHORITIES (IDA'S):** Generally, only an IDA may deny release of a properly requested record. IDA's are typically Flag/General Officers or officers exercising General Court-Martial Convening Authority.

**FEES:** Requestors may be charged fees for production of materials. Details as to fees and fee waivers are set out in SECNAVINST 5720.42 (series), enclosure (3). Note that typically a total of less than \$15.00 fee is waived.

**TIME LIMITS:** Must respond to FOIA requests within 20 working days. A command may obtain an informal extension from the requestor, or a formal request from the IDA.

**SPECIAL RECORDS:** Certain FOIA requests require special handling. Requests for the following must be forwarded to the appropriate custodian of the record:

NCIS reports.

IG reports.

Court-martial records.

Mishap and safety reports.

Nuclear information.

Medical quality assurance reports.

**ANNUAL REPORTING & TRACKING:** FOIA action officers must track all FOIA cases and all reimbursable fees (record search and review time and duplication costs). Use DD Form 2086 (contained in reference (b)) for all FOIA requests. Such records will also help in submitting annual FOIA reports. Echelon II IDA's are required to collect annual FOIA reports NLT 25 October each year.

**REQUESTS FOR INFO RELATED TO LITIGATION:** If the FOIA request (or any other request for information) is believed to be related to litigation in which the government is or might become a party, notify your servicing RLSO, SJA and OJAG (Code 15) at DSN 325-5450 or (202) 685-5450. [See reference (c)].

## ***PRIVACY ACT & PERSONALLY-IDENTIFIABLE INFORMATION (PII)***

**REFERENCES:** (a) JAGMAN, Chapter V  
(b) SECNAVINST 5211.5 (series)  
(c) DON CIO MSG 171952Z APR 07  
(d) DON CIO MSG 301540Z NOV 06

**RESOURCES:** Navy Privacy Act on-line site: <http://privacy.navy.mil>

**PURPOSE:** The Privacy Act limits the government in collecting personal information that will be stored in a “system of records,” and permits individuals access to information in a “system of records” that contains personal information about them, unless specifically exempted from disclosure.

**DENIAL AUTHORITIES:** Only a proper “Denial Authority” may deny release of a properly requested record. “Denial Authorities” are typically Flag/General Officers or officers exercising General Courts-Martial Convening Authority.

**PRIVACY ACT WARNINGS:** Required when someone from the command is requesting “personal information” (e.g., SSN) which will then be stored in a “system of records” (e.g., medical or personnel files, training records, JAGMAN investigations, etc...). Sample warning forms are provided in Chapter II to reference (a).

**INDIVIDUAL ACCESS TO FILES:** In most cases, an individual may access any record that contains personal information about them (e.g., medical and personnel files, unit punishment book, etc...). There are some exceptions to this rule.

**THIRD PARTY ACCESS TO FILES:** In most cases, a third party may not access any record that contains personal information about someone else. There are some exceptions, including:

Internal release within an agency (“need to know”).

“Routine use” as defined in the system’s notice (located at [privacy.navy.mil](http://privacy.navy.mil)).

Statistical research.

Law enforcement activity.

Congressional inquiries (where made on behalf of individual).

**PRIVACY ACT REQUESTS:** Privacy Act requests are to be acknowledged within 10 working days by the system manager and be acted upon within 30 working days. Requesters can appeal denials within 60 calendar days to the denial authority (See reference (b)).

**TRACKING:** For each record disclosed to a party outside DoD in response to a Privacy Act request, document such release with a "Disclosure Accounting Form" – OPNAV 5211/9, which is contained in reference (b) and available at the navy privacy website. .

## **Section VIII: INTERACTIONS WITH CIVILIANS ENVIRONMENTAL COMPLIANCE**

- REFERENCES:** (a) Navy Regulations, 0832  
(b) OPNAVINST 5090.1 (series)  
(c) MCO P5090.2 (series)  
(d) JAGMAN, Chapter XIII

**PERSONAL INVOLVEMENT:** The CO's personal attention and involvement in environmental compliance is essential in establishing the necessary environmental ethic.

**TRAINING:** Annual training should be given to all hands regarding the Navy's environmental compliance program. Specialized training may be required depending on duties assigned.

**SUPPORT NETWORK:** Numerous sources of information and support networks exist to assist Navy and Marine activities. These include "Regional Environmental Coordinators" (REC's), the Naval Facilities Engineering Command, and installation environmental program managers. Determine where support assets are located before environmental compliance issues arise.

**ENVIRONMENTAL COMPLIANCE EVALUATIONS (ECEs):** Both shore and afloat units are required to conduct annual ECEs. See references (b) and (c) for areas to be audited and for applicable checklists.

For any deficiencies identified in the ECE, a POA&M must be developed in order to get into compliance.

All ECEs and corrective measures taken should be documented and retained.

**REPORTING:** If the requirements of any environmental law cannot be achieved because of operational considerations, insufficient resources or other reason, the CO "shall report" to the ISIC. See reference (a). Many environmental regulations require that federal and/or state authorities be notified in situations involving spills or other unauthorized releases of pollutants to the environment. If there are any questions over whether to report, or who to report to, contact the REC staff.

**NAVAL VESSELS:** Strict control of vessel-generated waste discharges is required. OODs and Department Heads should be familiar with Chapter 19 of reference (b) and the rules for what may be pumped over the side.

**CONTACT WITH REGULATORS:** Report any and all contact with federal or state environmental regulators to the REC staff. This is particularly important with respect to requests to access ships. If you receive any "Notice of Violation/Non-Compliance," process in accordance with Appendix B to reference (b), or Appendix D to reference (c).

Points of Contact:

Marines

Eastern Area Counsel Office:  
(910) 451-9517

Western Area Counsel Office:  
(760) 725-5610

Navy

COMNAVREG MIDLANT  
(757) 445-9984  
DSN 564-9984

COMNAVREG SOUTHEAST  
(904) 542-5216  
DSN 942-5216

COMNAVREG SOUTHWEST  
(619) 532-1418  
DSN 522-1418

COMNAVREG NORTHEAST  
(860) 694 3976  
DSN 694-3976

**Report any and all spills of oil or other hazardous substances to the National Response Center at 1-800-424-8802, to your ISIC and to your REC. Failure to report may lead to personal liability.**

## **JURY DUTY**

**REFERENCES:** (a) SECNAVINST 5822.2 (series)  
(b) 28 U.S.C. 1863  
(c) 10 U.S.C. 982

**AUTOMATIC FEDERAL COURT EXEMPTIONS:** Reference (b) exempts all active duty members from serving on federal juries.

**AUTOMATIC STATE COURT EXEMPTIONS:** Flag officers, commanding officers, members assigned to operating forces; those in a training status; and those outside the continental United States are exempt from serving on state juries under reference (a).

**DISCRETIONARY STATE COURT EXEMPTIONS:** Officers with authority to convene special courts-martial may exempt members from state/local juries if jury duty would:

- unreasonably interfere with performance of their duties;
- adversely affect readiness of command as a whole.

**HOW TO EXEMPT:** CO should sign written letter to appropriate state official (normally clerk of courts) exempting member.

**OIC OR CO WITHOUT AUTHORITY TO CONVENE SPECIAL COURTS-MARTIAL:** Should forward request with a recommendation and justification as soon as possible

**MEMBERS AVAILABLE FOR JURY DUTY:** Should not be charged leave or lose any entitlement.

**FEES:** Fees received by member for jury duty must be turned over

**LAW ENFORCEMENT – CIVILIAN JURISDICTION**

- REFERENCES:** (a) 40 U.S.C. 255  
 (b) OPNAVINST 5100.12 (series)  
 (c) 18 U.S.C. 1382  
 (d) Navy Regulations, Article 0822

**BASE INTEGRITY AND SECURITY PARAMOUNT:** The installation commander, under the Internal Security Act of 1950, retains ultimate authority to protect his/her installation from any threat, no matter what type of jurisdiction is present.

**THREE TYPES OF JURISDICTION AND CIVILIAN MISCONDUCT:**  
 (Installations may have different types in different areas.)

**EXCLUSIVE:** Federal government has exclusive authority to make and enforce local laws. Civilian misconduct may be prosecuted in federal court. Local SJA or RLSO will have a Special Assistant U.S. Attorney to prosecute. Minor driving infractions may be handled in a base traffic court. See reference (b).

**CONCURRENT:** State and federal governments have equal authority to make and enforce local laws. DON or civilian law enforcement may respond and either may pursue prosecution. Each base or installation MUST have a memorandum of understanding with local civilian law enforcement agencies on these issues.

**PROPRIETARY:** Federal government is merely a tenant on the land and retains no power to make or enforce local laws. State law controls. State law enforcement normally makes all arrests, and prosecution will be in state courts. Active duty may also be prosecuted in state court for traffic violations and other crimes but will not necessarily preclude punishment under UCMJ for same offense.

**TYPE OF JURISDICTION DOES NOT AFFECT ENFORCEMENT OF UCMJ OVER MILITARY PERSONNEL:** UCMJ is applicable in all places and at all times to all active duty. On installations with concurrent or proprietary jurisdiction, however, a violation of the UCMJ might also be a violation of local law, which means military personnel could be tried in a state court.

**DETENTION OF CIVILIAN FOR DELIVERY TO CIVILIAN AUTHORITIES:** Regardless of the type of jurisdiction, COs may not confine civilians but may “detain” for a reasonable time until civilian law enforcement assumes physical custody of the individual. Notify NCIS immediately. See *SERVICE OF PROCESS/SUBPOENAS*.

**BARRING OF CIVILIANS:** Civilians who commit misconduct or who present a threat to good order and discipline on the base may be barred by the base CO from entering the installation. CO must issue a written order barring the individual from the installation. Those who violate the order may be tried in federal court, fined, and imprisoned. See references (c) and (d).

**LAW ENFORCEMENT – SUPPORT OF CIVILIAN POLICE AGENCIES**

- REFERENCES:** (a) 18 U.S.C. 1385  
 (b) SECNAVINST 5820.7 (series)  
 (c) JAGMAN, Chapter VI

**REPORTING REQUIREMENT:** If DON assets are requested, permission must come from SECNAV or SECNAV designee. If approved, cost recovery for DON is required.

**POSSE COMITATUS ACT (PCA):** The willful use of the Army or Air Force to execute civilian laws, without authorization from Constitution or Congress, is a criminal offense.

**DOD/DON POLICY:** The PCA is applicable to USN and USMC.

**EXAMPLES OF PROHIBITED ACTIVITIES:**

DON personnel may not assist civilian law enforcement by participating in:

The interdiction of a vehicle, vessel, or aircraft.  
 A search or seizure.

An arrest, apprehension, stop and frisk, or similar activity.

Surveillance or pursuit of individuals.  
 Investigations, interrogations, Undercover operations.

**EXAMPLES OF PERMITTED ACTIVITIES:**

Investigations of violations of the UCMJ.

Protection of classified information or equipment.

Use of equipment/facilities with appropriate approval.

Suppression of insurrection/domestic violence.

Protection of President; Vice President, dignitaries.

Maintenance of loaned equipment.

Training and expert advice on operation of equipment.

Support necessary during chemical/biological emergencies.

**APPLICATION:** PCA only applies to active duty in a duty status or when acting in an official capacity.

**CONFINEMENT OF MILITARY MEMBER FOR DELIVERY TO CIVILIAN AUTHORITIES:** Service member may be held in confinement if necessary under circumstances but only for a reasonable period to facilitate delivery to the civilians. Civilians MUST have a warrant or reasonable belief that the offense was committed by a member.

**ARREST WARRANTS FOR ACTIVE DUTY MEMBERS:** See reference (c) for detailed guidance.

Federal warrant: Upon display of credentials and warrant, turn over member.

In-State warrant: Upon display of credentials and warrant, turn over member. Ensure execution of delivery agreement.

Out-of-state warrant: Turn over member only if member waives extradition. (Member has right to consult with a lawyer before waiving.) Ensure execution of delivery agreement.

Foreign arrest warrant: Notify SOPA SJA immediately. DO NOT release until directed by higher authority.

**IF CO REFUSES TO ALLOW ARREST:** Inform OJAG (Code14) DSN 325-5450 or (202) 685-5450 immediately.

#### ***REPOSESSION OF PERSONAL PROPERTY***

**REFERENCES:** (a) JAGMAN, Section 0622

**DISCRETION OF THE INSTALLATION CO:** Repossession of personal property belonging to military personnel or their dependents located on a naval installation may be permitted at the discretion of the installation CO. The "repo-agent" must obtain permission from the CO in advance. The installation SJA should review the documents.

**LOCAL INSTRUCTIONS OR DIRECTIVES:** Should be implemented to ensure standard procedures are followed.

**INFORMAL INQUIRY BEFORE REPOSESSION IS ALLOWED:**

Contact the member to determine if he/she is aware of the problem, and rule out administrative error (e.g., an allotment problem).

**IF REPOSESSION IS TO BE ALLOWED:** The owner of the property should be afforded the opportunity to voluntarily relinquish the property. The member should be referred to a Legal Assistance attorney.

**NO BREACH OF THE PEACE:** Ensure that the repossession is carried out in the manner prescribed by the CO. Contact base security and have them on the scene to avoid any problems or altercations.

**SERVICE OF PROCESS/SUBPOENAS**

- REFERENCES:** (a) JAGMAN, Chapter VI  
 (b) SECNAVINST 5820.8 (series)  
 (c) MCO P5800.16 (series) (LEGADMINMAN) Chapter 9

**CO's CONSENT/CO's PRESENCE:** Service of process (a summons to appear in court as a party) will not be permitted within the command without the CO's consent. Where practicable, the member should be served within the CO's presence or that of another designated officer.

**IMMEDIATELY ADVISE MEMBER TO SEEK LEGAL COUNSEL.**

**LOCAL STATE COURT OR FEDERAL COURT SERVICE OF PROCESS:** CO should permit service upon members, civilian employees or dependents except in unusual cases when compliance would prejudice the public interest. Vessels in territorial waters of a state should be considered to be within the jurisdiction of that state for purposes of service of process.

**COURTS LOCATED OUT OF STATE:** Service of process shall normally be permitted under the same conditions as in-state service, but the CO shall ensure that the member is advised that he/she need not accept service.

**SERVICE BY OUT-OF-STATE MAIL:** If member refuses to accept, the refusal should be noted and the documents returned to sender.

**FOREIGN COURT/OVERSEAS SERVICE OF PROCESS:**

Normally addressed by the applicable SOFA. Contact overseas area coordinator SJA or base/installation SJA.

**RELATION TO OFFICIAL DUTIES:** When service of process upon a member or civilian employee arises from the performance of his/her official duties, ensure that the member is notified of his/her applicable rights IAW section 0616 of reference (a) and that copies of the process and pleadings along with a description of the pertinent facts are provided to the SJA for the GCMCA for immediate notification to JAG (Code 14) at DSN 325-5450 or (202) 685-5450.

**NORMALLY GRANT LEAVE OR LIBERTY:** Personnel who accept or are served with process should normally be granted leave or liberty to appear in court unless their absence would be prejudicial to Naval service. See MILPERSMAN 1050

**SERVICE OF SUBPOENAS:** (Court orders requiring a person to testify as a witness) shall be handled in the same manner as service of process with the following exceptions:

If service member is subpoenaed as a witness representing the Federal Government, the member will be issued TAD orders.

If service member is subpoenaed as a witness on behalf of the accused in federal court, no-cost permissive orders should be issued unless the member's absence would prejudice the command.

If service member is subpoenaed as a witness on behalf of a party to a civil or state criminal action with no Federal Government interest, leave or liberty should be granted if not prejudicial to command. (No-cost permissive orders shall be issued if witness is subpoenaed because of performance of official duties).

**REQUESTS FOR STATEMENTS AND/OR INTERVIEWS WITH SERVICE MEMBERS BY PARTIES TO PRIVATE LITIGATION:**  
Notify the cognizant SJA for the GCMCA. See reference (b).

**ARREST WARRANTS:** See *LAW ENFORCEMENT – SUPPORT OF CIVILIAN POLICE AGENCIES*.

**Section IX: OUTSIDE CONUS****CUSTOMS**

**REFERENCES:** (a) JAGMAN, Chapter XI  
(b) Navy Regulations, Article 0860

**PRIOR TO DEPLOYMENT:** Ensure adequate number of personnel are trained to act as military custom inspectors and adequate supply of forms are onboard.

**CO RESPONSIBILITIES FOR SHIP ARRIVAL:**

Must notify Customs District Director upon return to U.S. customs territory at port of first entry.

Must facilitate customs and immigration inspection and ensure proper immigration clearance for any military or civilian passenger.

Must distribute customs declarations to all passengers and crew.

Must file a cargo declaration within 48 hours if carrying anything other than U.S. property and passengers on official business.

**AIRCRAFT COMMANDER RESPONSIBILITIES FOR ARRIVAL:**

Upon entering U.S. customs territory provide advance notice to Customs District Director at place of first landing.

Notification may be made by radio, telephone, or other direct means; or through FAA flight notification procedures.

Must distribute declarations to all passengers and crew and facilitate inspection.

## **FOREIGN CLAIMS**

**REFERENCES:** (a) JAGMAN, Chapter VIII

**PURPOSE & SCOPE:** Promote friendly relations with foreign countries by promptly paying meritorious claims for death, injury, property damage or other loss caused by U.S. military members. The claim must arise outside the U.S. and its territories, possessions or commonwealths.

**VALID CLAIMANT:** Inhabitants of foreign countries including persons, corporations or other government or business entities and U.S citizens living abroad. Does not include tourist, travelers, U.S. service members or their dependents.

**EXAMPLES OF CLAIMS NOT COVERED:** Combatant claims, admiralty incident, patent infringement, claims of insurers, purely contractual claims of individuals or claims for paternity.

**ESTABLISHMENT OF CLAIMS COMMISSIONS:** COs should appoint responsible officers to adjudicate foreign claims. TYCOM directives may limit the authority to settle claims or require Judge Advocate approval. Foreign claims officers must diligently follow the requirement of reference (a) when investigating, documenting, adjudicating and reporting incidents.

**PRIVATE SETTLEMENT:** When a wrongdoer or group of individuals are identified as having committed a negligent act or an act outside the scope of duty, private settlement and voluntary restitution is an option that should be considered. Private settlement must be voluntary on the part of the member(s). The foreign claims officer should thoroughly document the incident in the same manner as a foreign claim, and ensure that a final settlement agreement and release is signed by the member and the claimant to prevent additional or supplementary claims for the same damage.

**FUNDING FOREIGN CLAIMS:** Funding source information is contained in reference (a).

**FOREIGN CRIMINAL JURISDICTION/SOFA**

- REFERENCES:** (a) JAGMAN, Sections 0609 and 1010  
(b) Fleet Deployment/Legal Manuals  
(c) Status of Forces Agreements (SOFA's)

**APPREHENSION OF U.S. MILITARY PERSONNEL BY FOREIGN**

**AUTHORITIES:** Report via OPREP/SITREP. All efforts should be made at the local level to secure the member's release pending final resolution of judicial proceedings. Members not released should be encouraged to notify parents and/or spouse or allow command to notify. Upon release members should be given complete medical examination and should provide sworn statement concerning conditions of confinement.

**IMPORTANT CONTACTS:** The following individuals may be able to assist: Consulate/Embassy/USDAO country representatives, NCIS regional offices, husbanding agents and Staff Judge Advocates for the GCMCA.

**SOFA COMPLIANCE:** In countries where the U.S. has a SOFA, the terms of that agreement will determine whether the member may be removed from the jurisdiction and whether the U.S. or host country will prosecute the case. In many countries, disciplinary action under the UCMJ (including NJP) may not be conducted until the issue of jurisdiction has been resolved with the host country. Consult with the cognizant SJA.

**NO SOFA:** If there is no SOFA, CO's are not authorized to deliver members or civilian employees of DON or their dependents to foreign authorities. Contact the cognizant SJA.

**WARSHIP SOVEREIGNTY:** U.S. warships are immune from any other nation's jurisdiction. COs shall not permit his/her ship to be searched or allow personnel to be removed by foreign authorities. If foreign authorities use force to compel submission, the CO should resist to the utmost of his/her power. See Navy Regulations, Article 0828.

**PERSONNEL RETAINED IN FOREIGN CUSTODY:** Must be visited on a regular basis and may not be separated from the service until they complete sentence and return to U.S. See MCO P1900.16.

## ***LIBERTY RISK***

### **REFERENCES:** (a) JAGMAN 0104

*(Primary instructions governing liberty risk are issued by major overseas and fleet commanders)*

**APPLICABILITY:** Liberty risk only applies in foreign countries and foreign territorial seas. The underlying purpose for liberty risk is to protect U.S. foreign relations with host countries.

**DISTINGUISH FROM DISCIPLINARY ACTION:** Liberty risk may not be used as punishment and cannot be awarded at NJP or courts-martial. Liberty risk should not be used as a subterfuge for pretrial restraint. Do not use this administrative measure to satisfy the need for discipline. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS* and *PRETRIAL RESTRAINT*.

### **GENERAL GUIDANCE:**

Only the CO or acting CO may assign a member to liberty risk (generally after a recommendation from a liberty risk board)

Placement on liberty risk cannot be automatic;

Lesser forms or limitations on liberty should be considered (e.g. limited hours ashore);

Each individual's status must be regularly reviewed;

Liberty risk cannot be indefinite.

### **RIGHTS OF MEMBERS PLACED IN LIBERTY RISK STATUS:**

Opportunity for request mast with the CO;

Specific notification in writing of the reason(s) for being placed on liberty risk; and

May not be required to muster or participate on special working parties with members serving punishment issued at NJP or courts-martial.

**ALCOHOL RELATED INCIDENTS:** DAPA/CAAC screening also should be conducted.

**MARRIAGES – OVERSEAS**

**REFERENCES:** (a) MILPERSMAN 5352-030  
(b) BUPERSINST 1722.1 (series)  
(c) MCO 1752.1 (series)

**REQUEST/APPLICATION:** Any member planning to marry a foreign national overseas must submit an application to the area coordinator. Applications should be sent to the nearest area coordinator. Contact PERS 66 for areas not listed in reference (a).

**COUNSELING:** Member must be counseled regarding the legal responsibilities incurred by marriage, including financial obligations. Member should also be advised that approval process is often lengthy.

**VALIDITY OF FOREIGN MARRIAGE:** The marriage must be valid under the law of the jurisdiction where it was performed.

**INTENDED SPOUSES:** Must receive medical screening and background investigations. Local United States Embassy or Consulate will conduct background investigation, including a criminal and subversive record check.

**VISAS:** There is no automatic right for foreign spouses to be granted visas to enter the United States. Foreign spouses must apply for an immigrant visa with local embassy or U.S. Citizenship and Immigration Service (USCIS).

## **Section X: LEGAL ASSISTANCE**

- REFERENCES:** (a) JAGMAN Chapter 7  
(b) MCO P5800.16 (series), Ch. 14  
(d) JAGINST 5801.2 (series) (Legal Assistance Manual)

**LEGAL ASSISTANCE PROGRAM:** The Department of the Navy legal assistance program provides free attorney assistance to members, their dependents, and other eligible clients regarding personal legal matters not involving military disciplinary proceedings. Legal assistance (LA) is provided at all Naval Legal Service Offices and Marine Law Centers and may also be available at the military legal offices of other services and from reserve personnel and units.

**ELIGIBILITY:** All active duty military members, retirees, and their dependents are eligible to receive services. Reservists activated for more than 30 days and their dependents are entitled to LA services during their period of activation and continuing after demobilization for a period of time equal to twice the amount of time for which they were activated. Reservists (but not their dependents) are also entitled to premobilization readiness services – such as wills and powers of attorney – at any time.

**CONFIDENTIALITY:** Information disclosed to an LA attorney is confidential and may not be disclosed to third parties without the client's consent. **LA offices are prohibited from disclosing information concerning a client – including whether the client received services at all – to the client's command or other persons.**

**SERVICES:** Although the availability of types of services may vary from office to office, services provided generally include assistance with *divorce, child and spousal support, adoptions, custody, estate planning, landlord/tenant disputes, contracts, consumer fraud, identity theft, and immigration issues and the preparation of legal documents such as wills, living wills and powers of attorney*. The assistance provided generally does not include in-court representation although some offices are permitted to prepare court documents.

**LA PROVIDERS:** Eligible recipients may seek legal assistance at any LA office, regardless of the branch of service. Navy and Marine Corps legal offices provide assistance to Soldiers, Airmen, and Coast Guardsmen, and Army, Air Force, and Coast Guard legal offices should similarly provide services to Sailors and Marines and their dependents. A helpful tool for locating the LA provider nearest you can be found at <http://legalassistance.law.af.mil/content/locator.php>.

**CONFLICTS:** Occasionally, a LA office will be prohibited from providing services to an otherwise eligible person due to an ethical conflict of interest. This usually arises when an attorney in the legal office has already provided assistance to the opposing party or to a party that previously listed the person seeking services as an opposing party. Members conflicted from receiving assistance at the office will normally be referred to an alternate service provider if one is reasonably available. Due to client confidentiality, the LA office is prohibited from telling the conflicted client why he or she cannot be seen.

**PREVENTIVE LAW:** Most LA offices have a preventive law program through which attorneys and other legal professionals provide informational briefings on a variety of topics including deployment readiness, consumer law, identity theft, automobile purchases, wills powers of attorney, and family support. Contact your local NLSO or Marine Law Center for more information or to schedule a briefing.

**PREDEPLOYMENT/PREMOBILIZATION SERVICES:** The main focus of the LA Program is Fleet readiness. LA offices have been charged with maintaining legal readiness programs designed to ensure legal awareness and mission readiness. Such programs often include command will visits and predeployment legal readiness check-ups. See *PREDEPLOYMENT LEGAL READINESS*.

## **PREDEPLOYMENT LEGAL READINESS**

- REFERENCES:** (a) DoD Dir 1350.4  
(b) OPNAVINST 5801.1  
(c) 15 U.S. Code 1681 *et seq*

**READINESS:** Poor legal readiness can significantly impair the member's ability to focus on mission accomplishment. Unfortunately, members often fail to address their legal problems in a timely fashion, creating larger legal problems for themselves and their families. Members should be encouraged and provided an opportunity to have their individual legal readiness assessed by a legal assistance attorney at least annually and well in advance of deployment.

**LEGAL ISSUES:** At a minimum the following legal readiness issues should be addressed:

**Powers of Attorney:** Allows an agent to act on the member's behalf. Special POAs authorize the agent to act in a narrow capacity (registering a vehicle, filing taxes, accepting or turning over gov't housing, etc.) while general POAs authorize the agent to act on the member's behalf in virtually any capacity. Due to the potential for abuse of a general POA, members are encouraged to carefully consider whether a general POA is necessary and whether they can fully trust their agent.

**Last Will and Testament:** Ensures that the member's wishes are carried out upon the member's death. Members should have a current and up to date will, and family members should know where to locate the will. Members should update their wills every time they PCS or experience a significant change in financial or dependency status.

**Living Wills and Health Care Powers of Attorney:** A Living Will (also known as an Advance Medical Directive) is a document that expresses the member's desires regarding the withdrawal of artificial life sustaining measures when the member is terminally ill or in a persistently vegetative state. A Health Care Power of Attorney is a document in which the member designates a person or persons to make health care decisions for the member in the event that the member becomes incapacitated.

**SGLI Designations:** Members should ensure that their SGLI designation forms are up to date. SGLI distributions are controlled exclusively by the SGLI designation form. Also, members wishing to designate children under 18 as beneficiaries should seek the assistance of a legal assistance attorney to establish a trust or custodianship to avoid significant delay and expense when it comes time for distribution.

**Page 2 (record of dependency data):** An out of date Page 2 can cause problems and confusion in contacting dependents and can result in dependents being denied military benefits.

**Family Matters:** Family care plans, and issues regarding divorce, support, custody, visitation and military ID cards should all be resolved or addressed prior to deployment. Poor planning in this regard can result in significant impairment of member readiness.

Pending Court Cases: Members should take action to address or postpone pending court actions prior to deployment. Failing to appear may result in a default judgement against the member (in civil cases) or the issuing of a bench warrant (in criminal cases).

#### **Preventing Identity Theft – Active Duty Alerts and Free Credit Reports:**

Deployed and TAD members are highly susceptible to identity theft. To minimize the potential for identity theft, members should consider filing an Active Duty Alert with one of the three Consumer Reporting Agencies (CRAs), Trans Union (1-800-680-7289), Equifax (1-888-766-0008), or Experian (1-888-397-3742). Once an Active Duty Alert is placed on a member's credit report, potential creditors are required to contact the member at a phone number provided by the member or otherwise positively identify the member before extending new credit, issuing additional cards on existing credit accounts, or extending credit limits on existing accounts. Filing an Active Duty Alert also takes the member's name off of prescreening lists provided by CRAs to creditors and insurance companies seeking to solicit new business. Members may file an Active Duty Alert on the credit report by contacting one of the three CRAs, which must then notify the other two CRAs of the alert. Members should also be encouraged to regularly monitor their credit report by taking advantage of their right to receive a free annual credit report from the major CRAs. Visit [www.annualcreditreport.com](http://www.annualcreditreport.com) (a website sponsored by the major three CRAs) for more information.

**ASSISTANCE:** Legal readiness assistance is available at all Naval Legal Service Offices and Marine Law Centers and may also be available at other legal offices and from Naval and Marine Corps Reserve personnel and units. Many legal offices will send attorneys to commands to conduct will and power of attorney visits, provide predeployment briefs, and conduct legal readiness assessments.

## SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

### REFERENCES: (a) 50 United States Code §§501-596

The SCRA is a federal law that provides service members – and in some cases, their dependents – with a variety of important federal protections in civil matters. These laws were passed in an effort to address some of the disadvantages faced by military personnel in dealing with their personal civil affairs due to the transient and unpredictable nature of military life. Several of the more important provisions are discussed below. Service members facing legal problems should be referred to a legal assistance attorney.

**LEASE TERMINATION:** The SCRA provides a service member the right to terminate a lease for real property that is occupied or intended to be occupied by the service member or his dependents if, after signing the lease:

The service member enters military service (an activated reservist, for example);

The service member receives orders to deploy with a military unit for 90 days or more; or

The service member receives PCS orders.

To terminate a lease under the SCRA, the tenant must deliver written notice of his intent to terminate the lease under the SCRA and provide a copy of the deployment/PCS orders. For sailors deploying with a ship, the sailor should obtain a letter from the command verifying the approximate dates and duration of the deployment (since the sailor himself will not receive a deployment order). Once the service member provides the required notice and documents, the lease is terminated effective 30 days from the date on which the next rent payment would be due. For example, if the rent is normally due on the 1st day of the month and the member provides notice on 15 March, the lease would be terminated effective 1 May (30 days from 1 April). Although landlords are prohibited from charging an early termination fee under the act, the landlord can still assess fees for late payments (if the tenant is behind on rent) and damage to the property.

**STAY OF LEGAL PROCEEDINGS:** The SCRA provides the member a right to "stay" -- or delay -- civil and administrative proceedings if the member's ability to appear is *materially affected by the member's military service*. This protection applies only to civil and administrative proceedings – not criminal proceedings. If the member qualifies for the stay, the court MUST grant the stay for a minimum of 90 days. To request the stay, the member must submit to the court:

A letter stating how the member's military service materially affects his ability to appear and when the member will be able to appear; and

A letter from the member's commanding officer stating that the member's current duty prevents appearance and that leave is not authorized.

The member may request a delay longer than 90 days, but the court has the option of denying the request and proceeding without the member. The SCRA stay provisions do not make the matter go away – the member will eventually have to take action to resolve the matter

**DEFAULT JUDGMENTS:** Members have the right to reopen *default judgments* (judgments issued by a court when the member fails to appear at a hearing and contest the matter) issued in civil cases in which the member's military service materially affected his ability to appear in the case and the member has a meritorious defense. Additionally, before a court issues a default judgment, the SCRA requires that the other party file an affidavit with the court stating either that the person is in the military service, is not in military service, or that the party filing the affidavit does not know if the person is in the military service. The Act provides penalties for filing a false affidavit but does not provide a penalty for failing to file an affidavit.

**6% INTEREST RATE CAP:** Members are entitled to have the interest rate capped at 6% for all preservice/preactivation installment contracts. Creditors are required to forgive all interest in excess of 6% and recalculate payments to reflect the interest rate change. The interest rate cap does not apply to federally backed loans such as student loans.

**DOMICILE PROTECTION:** The SCRA permits members to maintain their legal domicile in a state even though they relocate out of that state. A member establishes domicile in a state by being physically present in that state at some point and having the intent to return to that state. Contrary to popular belief, members do NOT establish domicile by simply completing paperwork at their servicing personnel office. Once a member has established domicile in a state, the member should refrain from taking action contrary to that (i.e. registering to vote or obtaining a driver's license in another state).

**TAXATION:** The SCRA has numerous provisions designed to prevent military members from being taxed in multiple jurisdictions.

**Income Tax:** Military pay is deemed to have been earned in the member's state of domicile and only that jurisdiction may tax military pay. This does not apply to non-military pay which may be taxed by the jurisdiction in which the pay was earned, in which the taxpayer is currently living, and the taxpayer's state of domicile.

**Personal Property Tax:** A jurisdiction is prohibited from charging a personal property tax on a member's property if that property is located within that jurisdiction only because of the member's presence in that state due to military assignment (orders). This protection does not apply to sales or use taxes, and the member's state of domicile always remains able to charge a personal property tax.

**EVICTION PROTECTION:** Landlords are prohibited from evicting members and their dependents without first obtaining court order. If the member can demonstrate that his military service materially affects his ability to pay rent, the court can fashion an equitable remedy, including reducing the amount of rent. This protection applies for leases with a rent of \$2831 per month or less .

**REPOSSESSION PROTECTION:** Lenders may not repossess personal property owned by a member without first obtaining a court order to do so. This protection applies to obligations incurred before the member was ordered to active duty.

## ***DEPENDENT SUPPORT***

- REFERENCES:** (a) 32 C.F.R. Part 733, 734  
 (b) MILPERSMAN 1754-030  
 (c) MCO P5800.16 (series)  
 (LEGADMINMAN) Chapter 15  
 (d) MILPERSMAN 1910-140

**POLICY:** Military members are expected to provide continuous and adequate support for all lawful dependents. Each branch of the armed forces has issued support guidelines. References (b) and (c) provide the guidelines for the Navy and Marine Corps, respectively. Members who are the subject of nonsupport complaints should be encouraged to consult with a Legal Assistance attorney.

**COURT ORDERS AND WRITTEN AGREEMENTS:** Members are obligated to comply with written agreements and valid court orders that establish support obligations. Members failing to comply with such agreements and orders may be disciplined under Article 134, UCMJ, for failure to pay a just debt. Members contesting such orders must do so in the jurisdiction issuing the order.

**MILITARY SUPPORT REGULATIONS:** In the absence of a court order or written agreement, Navy and Marine Corps support regulations apply.

**PERSONS ENTITLED TO SUPPORT:** In the absence of a court order or written agreement, members are obligated to support their lawful dependents including spouses, natural children, and adopted children but not step children.

**NAVY:** Reference (b) provides guidelines and recommended levels of support. Commands must counsel the member concerning his/her support obligation but may NOT order a member to provide support in accordance with the guidelines.

**Waiver of Spousal Support:** Members may seek a waiver of the spousal support obligation when the spouse seeking support abused or abandoned the member, or the spouse engaged in an adulterous affair. Waivers are processed through DFAS IAW reference (b).

**Action Upon Complaint:** Counsel member concerning his/her obligation to support lawful dependents IAW reference (b) and advise of the possible consequences of failure to do so.

**Failure to Support:** Members failing to provide continuous and adequate support may lose their entitlement to BAH with dependents, receive adverse evaluation/FITREP marks, receive written counseling, and be administratively separated IAW reference (d).

**MARINES:** Reference (c) provides a formula for calculating support amounts and empowers commanders to issue a lawful order to provide support IAW the regulation.

**Waiver of Spousal Support:** Commanders may waive the spousal support obligation only when the spouse seeking the support abused the Marine, the spouse's income exceeds that of the Marine, the spouse and the Marine are both military members, or the Marine has been providing continuous support for the spouse for 12 months IAW reference (b). Commanders may also reduce the amount of support otherwise owed if the Marine is paying regular and recurring obligations of the spouse.

**Action Upon Complaint:** Counsel the member concerning his/her obligations and, if necessary, issue a written order to provide support in a specific amount using the forms in reference (c).

**Failure to Support:** Marines failing to provide continuous and adequate support may lose their entitlement to BAH with dependents and be subject to adverse administrative and disciplinary action, including punishment under the UCMJ for violation of a lawful order.

**PATERNITY:** In the case of out of wedlock children where paternity has not been established by affidavit, judicial decree, or DNA test, the member cannot be required to provide support.

See *PATERNITY COMPLAINTS*.

## PATERNITY COMPLAINTS

**REFERENCES:** (a) MILPERSMAN 5800-010  
(b) MILPERSMAN 1754-030  
(c) MCO P5800.16 (series) (LEGADMINMAN) CH 15

**POLICY:** Members owe the same duty of support to illegitimate children as they would to children born in wedlock.

**DETERMINATION OF PATERNITY:** DON does not determine disputed paternity actions, this is a matter for states.

**SUPPORT ORDERS:** Members must comply with state court orders.

Compliance is necessary even if member disputes paternity or does not believe that an official determination of paternity has been made.

Refer member to legal assistance attorney/civilian attorney to challenge order.

**UPON RECEIPT OF A WRITTEN COMPLAINT:** Member must be interviewed and counseled IAW reference (a).

**ADMISSION OF PATERNITY:** If member admits paternity, he should be counseled on obligation to provide support.

If no state order, support may be made IAW service guidelines in references (b) and (c), or member must enter into a voluntary written agreement with the mother or guardian of the child.

If member is now eligible for BAH, PSD will require written acknowledgement of paternity.

**DENIAL OR ACKNOWLEDGMENT OF PATERNITY:** Refer member to a legal assistance attorney/civilian counsel to challenge or before acknowledging paternity. Use the sample letter to respond to complainant in reference (a).

**ADMINISTRATIVE OR DISCIPLINARY ACTION:** After counseling, if the member continues to fail to provide child support IAW a state order, mutual agreement, or service guidelines, administrative or disciplinary action may be warranted. See *ADMINISTRATIVE & DISCIPLINARY OPTIONS*.

**LEGAL ASSISTANCE:** Members may be referred to a legal assistance provider for counseling on parenting issues such as paternity, blood testing and child support.

## **INDEBTEDNESS COMPLAINTS**

- REFERENCES:** (a) DoD Dir 1344.9  
(b) MILPERSMAN 7000-020  
(c) MILPERSMAN 7000-010  
(d) MCO P5800.16 (series) (LEGADMINMAN) Chapter 16  
(e) MILPERSMAN 1910-140  
(f) MCO P1900.16 (series) MARCORPSEPMAN 6210

**POLICY:** Members are expected to pay their just financial obligations in a proper and timely manner. However, no internal DoD authority exists to adjudicate disputed claims or enforce settlement of private claims made against members.

**COMPLAINTS:** Process IAW reference (b), (c) or (d), counsel the member, and refer the member to a Legal Assistance attorney and the Command Financial Specialist. Commands will not arbitrate disputed claims and may NEVER indicate to a complainant what, if any, command action was taken against a member. Command action will depend upon whether the complainant is a debt collector, creditor or non-creditor as explained below.

**DEBT COLLECTORS:** A debt collector is a person or entity regularly engaged in the collection of debts (e.g. collection agencies, law firms, etc.). Debt collectors are **prohibited** by the Fair Debt Collection Practices Act from contacting third parties (including the member's command) to collect a debt that has not been reduced to judgment unless the member consents to such contact after the delinquency occurred. Most indebtedness complaints from debt collectors should be returned without action using the sample letter in reference (b) or (d).

**CREDITORS:** A creditor is a person or entity that extends credit (e.g. car loans, bank loans, credit cards, etc.). Creditors must certify compliance with the DoD Standards of Fairness and, if subject to Federal Trade Commission (FTC) regulations, must certify compliance with the Truth in Lending Act and other FTC regulations before the command acts on a complaint from the creditor. Command assistance to creditors should be limited to administrative referral of correspondence to the member and counseling of the member concerning his obligations. Commands should respond to creditors using the sample letter in reference (b) or (d).

**NON-CREDITORS:** A non-creditor is an entity that did not extend credit but to whom money is owed (e.g. the member bounced a check to a supermarket or landlord). Commands should respond to non-creditors using a letter substantially similar to the letters in reference (b) or (d). See reference (c).

**DOCUMENTING A MEMBER'S FAILURE:** Use Page 13/11 administrative remarks for members with serious or recurring problems.

**DISCIPLINARY ACTION:** May be initiated when there has been a dishonorable failure to pay just debts or dishonorable failure to maintain checking funds under Article 134, UCMJ.

**ADMINISTRATIVE SEPARATION:** May be used when there is a pattern of failure to pay just debts and the member has violated written counseling to that effect. See references (e) and (f).

**INVOLUNTARY ALLOTMENT APPLICATIONS (DFAS Form 2393):**  
Process IAW reference (a).

## **Section XI: FAMILY RELATIONSHIP ISSUES**

### ***DOMESTIC ABUSE PREVENTION***

- REFERENCES:** (a) SECNAVINST 1752.3 (series)  
(b) OPNAVINST 1752.1 (series)  
(c) OPNAVINST 1752.2 (series)  
(d) MCO P1700.24 (series)

**EDUCATION AND TRAINING FOR ALL HANDS:** Regularly emphasize and discuss DON family violence policies that emphasize prevention; recognition; prompt notification and reporting; and the availability of responsive services.

Publish and place on command bulletin boards information concerning victim services and family violence rehabilitative education and counseling.

**EDUCATION AND TRAINING FOR SUPERVISORS:** Ensure that military and civilian supervisors are trained in identifying signs of abuse and FAP referral procedures.

**FAMILY PROGRAMS:** Conduct activities that contribute to a healthy family life (e.g. family picnics, family career day, etc.).

**CIVILIAN LIAISON:** Installation COs must establish a cooperative relationship with appropriate civilian authorities to provide for reciprocal reporting of information and development of a community based approach to family violence. Memoranda of Understanding (MOU's) are recommended.

Issue Military Protective Orders when appropriate. See DOMESTIC VIOLENCE/FAMILY ADVOCACY Incidents.

***DOMESTIC VIOLENCE / FAMILY ADVOCACY INCIDENTS***

- REFERENCES:** (a) SECNAVINST 1752.2 (series)  
 (b) DOD Directive 6400.1  
 (c) 10 U.S.C. Sec. 1058  
 (d) OPNAVINST 1752.1 (series)  
 (e) OPNAVINST 1752.2 (series)  
 (f) MCO P1700.24 (series)  
 (g) 18 U.S.C Sec 921 (series)  
 (h) MILPERSMAN 1910-162

**POTENTIAL REPORTING REQUIREMENTS:**

OPREP-3 for major incidents

Unit SITREPS for minor incidents

Major criminal offenses to NCIS. (See *NCIS INCIDENT REPORTING*)

Violent crime message. (See *VIOLENT CRIME REPORTING*)

Incidents involving sexual assaults. (See *VICTIM/WITNESS*)

Incidents involving officers IAW with TYCOM/Echelon II requirements. (See *OFFICER MISCONDUCT*)

**NOTIFICATION TO FAMILY ADVOCACY REPRESENTATIVE**

(FAR): Navy, notify FAR of all allegations of spouse or child abuse. FAR will notify BUPERS (Pers-48 and Pers-6), when allegations of child sexual abuse are made. USMC, notify command Family Advocacy Officer and/or Family Advocacy Program Manager at Marine and Family Services.

**TRACK THE CASE:** Appoint the XO or a responsible command representative to work with Family Advocacy and provide command input on disposition.

**DISPOSITION:** The Family Advocacy Case Review Committee (CRC) will make a determination of either "substantiated" or "unsubstantiated – did not occur" or "unsubstantiated – unresolved" within 90 days. This determination, along with any treatment recommendations, will be forwarded to the commands of the offender and victim, if a different command, in a written report.

Command must debrief the alleged offender, victim, or victim's sponsor on the report and their rights and obtain a signed statement of rights form.

CO maintains sole discretion over disciplinary action. Family Advocacy review does not preclude or limit command disciplinary action. (See *ADMINISTRATION & DISCIPLINARY OPTIONS*)

## **APPEAL OF CRC DETERMINATIONS:**

Navy: CRC determinations can be appealed to the CRC, and then to a Headquarters Review Team at BUPERS. Appeals must be in writing, and normally filed within 30 days of the advisement of the CRC determination. Appeals can be filed by the alleged offender, victim, or command of either, on the following grounds:

Newly discovered evidence

Fraud upon the CRC

Voting member of the CRC absent

Not Guilty/Guilty finding after a full trial on the merits that is contrary to CRC findings

Plain legal or factual error.

USMC: CRC determinations can be appealed to the installation CRC. Appeals must be in writing, and normally filed within 10 days of the advisement of the CRC determination. Appeals can be filed by a substantiated offender or victim, or person legally responsible for the victim, or either spouse where the incident was "unsubstantiated – did not" occur on the following grounds:

Newly discovered information,

Failure to substantially follow correct procedures, or

Not Guilty/Guilty finding after a full trial on the merits that is contrary to CRC findings.

**TREATMENT OF VICTIMS:** Coordinate under the Victim/Witness Assistance Program. (See *VICTIM/WITNESSES*).

**INTERVENTION:** Ensure that appropriate actions are taken to provide for the protection of victims during the investigation and processing of a FAP case [e.g. issuance of a military protective order (MPO) to remove the military member from the family home (whether on or off base); coordination with local child protective services to have the child removed from the home; or issuance of an order barring alleged perpetrators from Navy installations]. (See *LAW ENFORCEMENT CIVILIAN JURISDICTION*).

**MILITARY PROTECTIVE ORDERS (MPO):** Written order requiring member to move out of home or to "stay away" from complainant. Should be issued whenever it is likely or foreseeable that further incidents will arise. Should be issued in writing. Must be temporary in nature but may be renewed and should be in force until Family Advocacy counselors have intervened. Will also protect members from false allegations. Consult with a legal advisor.

**INTERVIEWING OR QUESTIONING SUSPECTED OFFENDERS:**

Should not be done if a law enforcement agency (NCIS, CID, or civilian) is investigating. (See NCIS *INCIDENT REPORTING & SUSPECT—QUESTIONING*).

**ALCOHOL RELATED INCIDENTS:** DAPA/CAAC/SACO screening should be conducted.

**MANDATORY PROCESSING:** ADSEP processing must be initiated for sexual perversion, or in any case involving conduct which caused or could have caused death or serious bodily injury. Rehabilitation failure cases are separated under reference (h) (See *ADMINISTRATIVE SEPARATIONS*).

**ADMINISTRATIVE BOARDS:** Request assignment of a Judge Advocate to act as the command representative.

**FIREARMS AND AMMUNITION POSSESSION:** If convicted at SPCM/GCM or any civilian court of crime of domestic violence, then service member is no longer permitted to possess a firearm or handle ammunition, even in the line of duty. Consult with your SJA for further information on Lautenberg Amendment restrictions.

**Section XII: ETHICS****GUIDELINES FOR ETHICAL CONDUCT**

- REFERENCES:** (a) 5 CFR 2635  
(b) DoD 5500.7-R (JER)  
(c) MCO P5800.16 (Series) (LEGADMINMAN), Ch 11

**BASIC OBLIGATIONS OF PUBLIC SERVICE**

Public service is a public trust, requiring employees to place loyalty to the Constitution, the law, and ethical principles above private gain.

Employees shall not hold financial interests that conflict with the conscientious performance of duty.

Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

An employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

Employees shall put forth honest effort in the performance of their duties.

Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

Employees shall not use public office for private gain.

Employees shall act impartially and not give preferential treatment to any private organization or individual.

Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

Employees shall satisfy in good faith their obligation as citizens, including all just financial obligations, especially those – such as Federal, State, or local taxes – that are imposed by law.<sup>7</sup> Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the standards of conduct.

**COMMERCIAL DEALINGS BETWEEN MEMBERS**

**REFERENCES:** (a) DoD 5500.7-R (JER), Section 5-409

**SENIOR TO JUNIOR:** On or off duty, a military member cannot solicit or sell to personnel who are junior in rank, grade or position, or to the family members of such personnel. Included in this prohibition are sales of insurance, stocks, mutual funds, cosmetics, household supplies, vitamins, real estate or any other goods or services.

**EXCEPTIONS:**

Absent coercion/intimidation, the sale or lease of noncommercial personal or real property and commercial sales solicited and made in a retail establishment during off-duty employment are not prohibited.

Sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion/intimidation.

**SPOUSES/OTHER HOUSEHOLD MEMBER:** Must seek opinion of Ethics Counselor (GCM SJA) if spouse or household member is soliciting sales to junior personnel or their families. The member should be counseled that such sales activities are to be avoided where it may cause actual or perceived partiality or unfairness, involve the actual or apparent use of rank/position for personal gain, or otherwise undermine discipline, morale, or authority.

## ***CONFLICTS OF INTEREST***

**REFERENCES:** (a) 18 U.S.C. 208  
(b) DoD 5500.7-R (JER), Section 5-100

**OFFICIAL ACTIONS THAT HAVE A DIRECT AND PREDICTABLE EFFECT ON PRIVATE FINANCIAL INTERESTS:** Officer and enlisted members are prohibited from participating personally and substantially in an official capacity in any particular matter in which he/she (or any person whose interests are imputed to him/her) has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

**IMPUTED INTERESTS:** The interests of a spouse, child, general partner, organization in which the employee serves (i.e., as a director or trustee), or anyone with whom the employee is seeking or negotiating future employment, are imputed to the employee.

### **WHEN A CONFLICT EXISTS OR MAY (EVEN REMOTELY) EXIST:**

Seek the opinion of an Ethics Counselor (GCM SJA).

Disqualify and do not participate or take further action on the matter.

Provide written notice of the particular conflict to superior duties.

Request a waiver, disqualification, reassignment or limitation of duties.

**PUBLIC FINANCIAL DISCLOSURE REPORT (SF-278):** All flag/general officers must file:

When promoted, annually thereafter, and upon termination.

Ensure it is reviewed by an Ethics Counselor for potential conflicts of interest.

Ensure any necessary remediation is made for conflicts disclosed.

This document is available to the public.

**CONFIDENTIAL FINANCIAL DISCLOSURE REPORT (OGE450):** The following personnel are required to file:

Navy shore installations with 500 or more military and civilian personnel.

All CO's and XO's, heads, and deputy heads of

Army, Air Force, and Marine Corps installations, bases, air stations or activities.

All personnel who participate personally and substantially in contracting or procurement, regulating or auditing any non-Federal entity, or other activities having a direct and substantial economic impact on the interests of any non-Federal entity.

Any person whose official responsibilities require personal and substantial participation in contracting or procurement must file:

Upon assuming the covered position and annually thereafter.

It is reviewed by Ethics Counselor for conflicts and remediation if necessary.

Information is kept confidential.

**JOB HUNTING:** When seeking outside employment the employee must disqualify himself/herself from any official action which could possibly affect the financial interests of the prospective employer.

Disqualification must be in writing and sent to employee's supervisor.  
Can be reinstated when either party rejects possible employment.

## FUNDRAISING

- REFERENCES:** (a) DoD 5500.7-R (JER), Sections 3-210  
(b) DoDI 5035.01  
(c) OPNAVINST 1754.5 (series)

**OFFICIAL ENDORSEMENT:** Commands may officially endorse fundraising efforts of the Combined Federal Campaign, the Navy-Marine Corps Relief Society, and emergency/disaster relief appeals approved by the Office of Personnel Management (OPM). Additionally, organizations composed primarily of DoD employees or their dependents may receive official endorsement.

**OFFICIAL SUPPORT:** Commands may officially support (vice endorse) a charitable fundraising event sponsored by a non-Federal entity if certain criteria of reference (a) are met. Such support is limited to logistical support (i.e., use of DoD facilities and equipment on a limited basis).

**WORKSPACE SOLICITATIONS:** Only for approved organizations with an official endorsement. Solicitations must be conducted in such a way as to ensure all contributions are voluntary. Coercive practices are prohibited:

Solicitation by supervisors.

Setting 100 percent participation goals, mandatory personal goals or quotas.

Using contributor or non-contributor lists for any purpose other than routine collection and forwarding of pledges.

Counseling or grading of individuals based on their failure to contribute, or the size of their contribution.

Special liberty should not be used as an incentive to contribute to any fundraising effort.

**FUNDRAISING EVENTS ON NAVY INSTALLATIONS:** Reference (b) authorizes CO's to allow limited fundraising for:

Military support organizations such as the USO or Spouse club;

Local, community-wide programs such as volunteer fire companies, or youth groups; or

Olympic and Pan American games.

**FUNDRAISING BY PRIVATE ORGANIZATIONS AND/OR SPOUSE CLUBS:**

Sales of merchandise or services is authorized, but should be limited to occasional sales, and not be frequent or continuous. Competition with Navy Resale activities should be minimized. Gambling and/or raffles and lotteries are prohibited.

See *PRIVATE ORGANIZATIONS AND SPOUSE CLUBS, BIRTHDAY BALL FUNDRAISING, and GAMBLING*.

**RAFFLES:** Authorized for Navy and Marine Corps Relief.

**BINGO:** Authorized for MWR programs. See BUPERSINST 1710.11 (series).

**SOLICITING CONTRIBUTIONS FROM OUTSIDE SOURCES:**

(e.g., local merchants) Prohibited for any and all fundraising activities.

**USE OF RANK OFFICIAL TITLE AND POSITION:** May be used when conducting fundraising in official capacity for approved organizations. Only grade and military component may be used in connection with activities performed in personal capacity.

**PERSONAL FUNDRAISING ACTIVITIES:** In a private capacity, charity work, to include fundraising is encouraged. The following are prohibited:

Solicitations in the work place.

Solicitation of subordinates.

Solicitation of prohibited sources.

See *GIFTS FROM OUTSIDE SOURCES*.

## BIRTHDAY BALL FUNDRAISING

**REFERENCES:** (a) MCO 5100.31, Marine Corps Ball Funding

- (b) MCO P1700.27 (series), MCCS Policy Manual
- (c) DoD 5500.7R, Joint Ethics Regulation
- (d) MCO 5760.4 (series), Private Organizations on DoD Installations
- (e) MCO P5800.16 (series), (LEGADMINMAN)

**USMC BIRTHDAY BALL.** Two tiered event: Birthday balls have official and unofficial “tiers,” as set forth in reference (a), with different funding sources. The order allows limited use of appropriated funds for official portion:

Transportation, printing, publication, and official ceremonial photos covered.

Guest of honor and cake expenses must not be paid from appropriated funds.

Two funding options for unofficial portion:

Nonappropriated funds (NAF) NAF fundraising must have MCCS oversight.

Gambling by DoD employees prohibited. Sections 2-302, 3-210, and 3-211 of reference

(c) severely constrain gambling activity and render impracticable unit raffles without MCCS oversight and control.

Raffles not recommended. Reference (b) contemplates units raising funds for MCCS.

Reference (b) allows MCCS to conduct raffles.

Private small unit fund established under reference (d) and applicable local orders.

Income limits and other restrictions to comply with reference (c).

Maintain accountability and sound management.

Fundraising: For either informal unit fund or via MCCS fundraising.

See *FUNDRAISING*

Gifts and donations cannot be solicited except among unit members. Unsolicited donations must be accepted as provided in chapter 12 of reference (d).

## **U.S. NAVY BIRTHDAY BALLS.**

Official Event. Component command may officially sponsor and endorse a local Navy Ball as an official DOD function. See DODINST 5410.19, Public Affairs Community Relations, and SECNAVINST 5720.44 (series), Department of the Navy Public Affairs Policy and Regulations. If a Navy Ball is official, then active planning and management by personnel, acting in their official capacity, would be authorized. However, one consequence of an official event is that any type of fundraising or solicitation of gifts would be prohibited. See SECNAVINST 4001.2 (series), Acceptance of Gifts, (prohibiting Navy personnel from soliciting gifts for Navy organizations and requiring the return of wrongfully accepted gifts). Even if the Navy Ball is an official function, funding must be at no cost to the Government. DODINST 5410.19 states that DOD support of community relations programs not specifically enumerated shall be at no additional cost to the Government. A Navy Ball is not one of the programs specifically enumerated in the instruction.

Unofficial Event. Because of restrictions that apply to official functions, one option used is to conduct a Navy Ball as an unofficial event that is coordinated by a private, volunteer committee. If an unofficial committee is used, such a committee is a non-Federal entity, with attendant JER consequences. JER 3-301 allows DOD employees to become members and participate in the management of non-Federal entities in a personal capacity, provided they act exclusively outside the scope of their official position.

Always consult with local legal advisor, Staff Judge Advocate or General Counsel, when undertaking any fundraising activity.

## **GAMBLING**

**REFERENCES:** (a) DoD 5500.7-R (JER), Section 2-302  
(b) BUPERSINST 1710.11 (series)

**PROHIBITION:** Gambling is prohibited while on duty or on federal property. Includes any game of chance, lotteries, raffles, drawings or office pools (e.g., Super Bowl or Final Four).

Use of government resources to prepare or further such activities is also prohibited.

**MWR BINGO AND NAVY RELIEF RAFFLES:** Are permitted when conducted IAW applicable directives. See *FUNDRAISING*.

Gambling activities by organizations composed primarily of DoD employees or their dependents may be permitted when approved by the Secretary of the Navy.

**GAMBLING IN GOVERNMENT QUARTERS:** Small wagers (e.g., card games, pools on sporting events), based on a personal relationship, transacted entirely within assigned government quarters (but not onboard ships) and not in violation of local law are permissible.

Participants may not engage in such conduct or activities if it would violate Navy Regulations (Gambling with Subordinates) or the service fraternization policies. See *FRATERNIZATION*.

## **GIFTS BETWEEN EMPLOYEES**

**REFERENCES:** (a) DoD 5500.7-R(JER), Sections 2-100 and 2-203

**GENERAL RULE:** A junior may not offer, give, make a donation, or solicit contributions for a gift to a senior in the same chain of command and the senior may not accept such a gift.

### **EXCEPTIONS TO THE GENERAL RULE:**

Token gifts of a nominal value (less than \$10.00) may be given on non-frequent, occasional basis (e.g., a junior may give a superior a bag of candy when returning from a vacation).

Food and refreshments shared in the office.

Reasonable personal hospitality at a residence or a gift in return for such hospitality (e.g., a junior could invite a superior to dinner).

On special infrequent occasions such as child birth, marriage, retirement, etc... a gift appropriate for the occasion may be given.

**GROUP GIFTS:** Authorized for special infrequent occasions (e.g., change of command or retirement). Get advice from your Ethics Counselor. Total cost cannot exceed \$300/group or \$10.00/person. All contributions must be voluntary. Cannot solicit more than \$10.00/person; however, members can choose to contribute more.

Creative attempts to avoid the \$300 maximum should be avoided (e.g., an organization should not be divided into different components solely to avoid the \$300 maximum by buying components of a greater gift).

Where the senior-subordinate relationship is terminated (retirement, resignation, or PCS transfer) the \$300.00 limit may be exceeded if the gift is appropriate for the occasion and is uniquely linked to the departing employee's position or tour of duty. The remaining rules (voluntary, \$10 per person limit, etc...) apply.

**A SUPERIOR MAY NOT COERCE A SUBORDINATE TO CONTRIBUTE OR PROVIDE A GIFT (THIS TYPICALLY IS WHERE MANY IG CALLS COME FROM).**

## ***GIFTS FROM OUTSIDE SOURCES***

- REFERENCES:** (a) DoD 5500.7-R (JER), Section 2-100  
(b) SECNAVINST 4001.2 (series)  
(c) SECNAVINST 1650.1 (series)  
(d) U.S. Constitution: Article I, Section 9, Clause 8  
(e) OPNAVINST 4001.1 (series)

**GENERAL RULE:** Federal employees are forbidden from soliciting, coercing, or accepting gifts from a “prohibited source” and gifts offered because of the employee’s official position. Gifts to family members or a designee are “imputed” to the employee.

**“PROHIBITED SOURCES”:** Any entity or person who is seeking official action from a federal employee or a federal agency; is doing or seeking to do business with the agency; or is regulated or substantially affected by the agency.

**DEFINITION OF “GIFT”:** Anything of monetary value. Items exempted from the definition, and therefore not considered gifts:

Modest refreshments which are not offered as part of a meal (the “coffee and donut rule”).

Greeting cards.

Widely available discounts available to all military personnel.

Prizes won in contests or events; including random drawings, which are open to the public.

Items for which you pay fair market value (if you pay for it, it’s not a gift).

**COMMON EXCEPTIONS TO THE GENERAL RULE PROHIBITING ACCEPTANCE OF A GIFT:** (In all cases, and especially with regard to the exceptions listed below, an employee is prohibited from requesting, soliciting or coercing a gift; allowing or creating the appearance of bribery or graft; or accepting gifts so frequently that it creates an appearance of impropriety.)

Gifts worth less than \$20.00 per occasion. No more than \$50.00 worth of gifts from any one source/calendar year.

Gifts given because of a bona fide personal relationship.

Awards for meritorious service. Must typically be non-cash and worth less than \$200.00.

Gifts based on outside employment (i.e., approved moonlighting job or due to a spouse’s employment).

Free attendance at an event where employee is speaking on behalf of agency.

Free attendance at “widely attended gatherings” where attendance is deemed by a supervisor to be in the interests of the agency.

**FOREIGN GIFTS:** Gifts from foreign governments may be accepted if proper diplomacy requires.

Gifts with a fair market value (FMV) less than \$335 may be kept by the employee.

Gifts with a FMV over \$335 may be accepted on behalf of DON and processed IAW reference (c).

**PROCUREMENT (CONTRACTING) OFFICIALS:** Anyone in a procurement position or who has ultimate responsibility for procurement should see their Ethics Counselor (GCM SJA) before accepting any gift.

**NEVER ASSUME:** Past practice or custom in an organization to accept certain gifts is not a defense. ASK THE ETHICS COUNSELOR (GCM SJA).

**CIVIL AND CRIMINAL PENALTIES EXIST FOR VIOLATIONS OF THESE RULES.**

## ***GOVERNMENT PROPERTY***

**REFERENCES:** (a) DoD 5500.7-R (JER), Sections 2-100 and 2-301  
(b) DoD Dir 4500.56

### **PREVENT MISUSE OF GOVERNMENT PROPERTY:**

Government property may not be utilized for private/personal purposes.

**EXCEPTION:** Limited personal use of Government resources may be permitted when:

No adverse effect on performance of official duties;

Use is of reasonable duration and frequency and use is during personal time;

Serves a legitimate public interest;

Does not reflect adversely on DoD or the command; and

Creates no significant additional cost to DoD or the command.

**PREVENT MISUSE OF GOVERNMENT TIME:** While receiving pay, unless the member is in an authorized leave or liberty status, all hours should be dedicated to government work. Superiors cannot order junior personnel to perform personal tasks which benefit the superior (e.g., order to perform non-official "taxi" services for the CO's spouse).

**AVOID "APPEARANCE" PROBLEMS:** For both government property and time, members must not create the appearance of misuse/impropriety (e.g., using government vehicle at a "drive-thru" restaurant, even on official travel).

**GOVERNMENT VEHICLES:** May not be used to transport employees between their home and work. (31 USC 1344). TYCOM and local directives should be consulted for further definition of authorized and/or prohibited uses.

**RENTAL VEHICLES:** (See *TRAVEL BENEFITS*)

**GOVERNMENT AIRCRAFT:** DoD guidelines on use of government aircraft and air travel state that official travel should normally be accomplished using commercial transportation. Use of MILAIR is a particularly sensitive area. Consult policy guidelines to ensure correct use. See Ref (b) and *TRAVEL BENEFITS*.

**GIGS OR BARGES:** Should avoid misuse or even the appearance thereof. May be used in support of foreign relations, community relations, and crew morale and welfare. It is highly recommended that you seek advice from an Ethics Counselor. Recreational use is not authorized.

**OUTSIDE EMPLOYMENT**

**REFERENCES:** (a) DoD 5500.7-R (JER), Sections 2-206 and 2-303  
(b) MILPERSMAN 5370-010

**CO's MAY REQUIRE MEMBERS TO REQUEST APPROVAL:**

Command policy should be promulgated to ensure outside employment will not interfere or conflict with military duties. Case by case determinations should be made.

**POTENTIAL CONFLICTS:**

Interference with official duties or time.

Employment by a defense contractor. See *CONFLICTS OF INTEREST*.

Appearances of impropriety.

Dual compensation: Second salary paid from U.S. Treasury/appropriated funds.

Involvement in any matter in which the United States is an interested party or has a substantial interest.

Employment which will detract from readiness or pose a security risk.

Employment which prejudices good order and discipline or is service discrediting. See *COMMERCIAL DEALINGS BETWEEN MEMBERS*.

QUESTIONABLE SITUATIONS SHOULD BE DISCUSSED WITH AN ETHICS COUNSELOR.

## **POLITICAL ACTIVITIES – MILITARY ACTIVE DUTY**

- REFERENCES:** (a) DoD Dir 1325.6  
(b) DoD Dir 1344.10  
(c) OPNAVINST 1620.1 (series)  
(d) DoD 5500.7-R (JER), Ch 6  
(e) MCO 5370.7 (series)

### **ALLOWABLE AND PROHIBITED POLITICAL ACTIVITIES:**

Specifically allowed activities (e.g., voting, bumper stickers) and prohibited political activities (e.g., use of contemptuous words, performing clerical work for campaign) are listed in enclosure (3) of reference (a), and chapter 6 to reference (e).

**CO's ANALYSIS:** A CO may prohibit, limit, or control, the political expression of a member when there "is a clear danger to loyalty, discipline, or morale of military personnel; or there is a material interference with the accomplishment of the military mission." See *FREEDOM OF EXPRESSION*.

**WEARING UNIFORMS AT POLITICAL RALLIES:** Members are prohibited from wearing uniforms at any political activity, such as speeches, rallies, interviews, picket lines, marches, or assemblies, knowing that a purpose of the activity supports personal or partisan views on political, social, economic, or religious issues, except as authorized in advance by the CO.

**RIGHT TO DIRECTLY CONTACT CONGRESS:** No person may restrict any member from communicating with Congress in the member's personal or private capacity. See *CONGRESSIONAL INQUIRIES*.

## PRIVATE ORGANIZATIONS AND SPOUSE CLUBS

- REFERENCES:** (a) DoD Dir 1000.11 (FINANCIAL INSTITUTIONS)  
(b) DoD Inst 1000.15 (PRIVATE ORGANIZATIONS)  
(c) DoD Inst 7600.6 (AUDIT OF NAFI'S)  
(d) DoD Dir 1000.26E  
(e) OPNAVINST 1700.7 (MWR PROGRAMS)  
(f) OPNAVINST 1700.9 (CHILD DEVELOPMENT)  
(g) SECNAVINST 5720.44 (PUBLIC AFFAIRS)  
(h) OPNAVINST 5760.5 (YOUTH GROUPS)  
(i) BUPERSINST 1710.11 (MWR PROGRAMS)  
(j) MCO 1700.26 (series)  
(k) OPNAVINST 1754.5 (series)

**STATUS OF PRIVATE ORGANIZATIONS:** Private organizations are not Federal agencies or Nonappropriated Fund Activity (NAFI) and are not entitled to the same level of support. The nature and amount of support varies depending on the organization. Applicable regulations must be consulted to determine what level of support is authorized for any particular group.

**PRIVATE ORGANIZATIONS INCLUDE:** Spouse Clubs; Boy Scouts; Girl Scouts; Sea Cadets, athletic clubs; local school organizations; command organizations and social funds (e.g., First Class Association or Chief's Messes).

**NO DISCRIMINATION:** Private organizations must be denied support if they discriminate in membership practices based upon race, sex, religion, etc.

**CREATION OF PRIVATE ORGANIZATION:** Must have written approval from the installation CO to operate. Must have a constitution, by-laws, charter, or other authorization document approved by CO. Cannot state or imply sponsorship by DoD or DON, and should not use DoD, DON or other installation name or seal unless authorized.

**PERIODIC REVIEW:** Installation COs must conduct periodic reviews of all private organizations.

**FUNDING AND SUPPORT:** Private organizations are generally self-sustaining, primarily through dues, contributions, service charges, fees or special assessment of members. Limited fundraising activities conducted on the base may be permissible, under certain circumstances and controls. An ethics counselor (GCM SJA) should be consulted. Minimal logistical support is authorized, dependent on the type of private organization and the authority under which it is organized. No direct financial support from a NAFI is allowed except as specifically authorized by SECNAV.

Under certain circumstances, government resources may be used by private organizations on a "not to interfere" basis.

Spouse Clubs are known as "Family Support Groups" and enjoy the ability to receive official command support. FSGs may use the command's name in their name (e.g.: Family Support Group of USS MCFAUL). ( See Reference k).

**FUNDRAISING ON GOVERNMENT PROPERTY:** Sale of merchandise or services is authorized, but should be limited to occasional sales, and not be frequent or continuous. Competition with Navy Resale activities should be minimized. See *FUNDRAISING*.

## **TRAVEL BENEFITS**

- REFERENCES:** (a) DoD 5500.7-R (JER), Chapter 4  
(b) FY2002 National Defense Authorization Act,  
Section 1116, 28 Dec 01  
(c) Joint Federal Travel Regulations (JFTR)  
(d) 31 U.S. Code 1353  
(e) DoD Dir 4500.56

**ACCEPTING TRAVEL FROM A NON-FEDERAL SOURCE:**

Official travel by DoD employees should normally be funded by the Government. However, official travel benefits from non-Federal sources may be accepted for attendance in an official capacity at a meeting or similar event. Acceptance must be approved in writing and an Ethics Counselor must be consulted.

**INCIDENTAL BENEFITS:** As of 31 Dec 01, federal employees are allowed to retain promotional items, earned while on official travel, for personal use. These promotional items include frequent flier miles, upgrades, and access to carrier clubs/facilities. See reference (b)

**FREQUENT FLYER MILES (FFM's):** As described above, the 2002 NDAA now allows servicemembers to keep FFM's from official travel for personal use. FFM's can also be used on official travel for upgrades.

**ON THE SPOT UP-GRADES:** May now be accepted (even to first class) as long as official title and position are not basis for upgrade. (See ref (a)). One should avoid first-class travel in uniform.

**OVER-BOOKING:** If involuntarily bumped you may not keep free tickets or any other benefit received for personal use. If you voluntarily give up your seat and receive free tickets or another benefit, you may keep them for personal use. [Note: volunteering may not result in an increase of expense to the government; per diem and the additional time may not be charged or received on your travel claim].

**RENTAL VEHICLES:** Where public transport is not available, rental cars may be used to obtain suitable meals, visit drug stores, barber shops, cleaning establishments and similar places required for sustenance, comfort or health. (JFTR U3415). In all other respects, rules applicable to use of Government vehicles apply to use of rental cars. Use of rental vehicles for personal entertainment purposes is not authorized.

**GOVERNMENT AIRCRAFT:** (See GOVERNMENT PROPERTY)

## ***COMMAND COINS / RECOGNITION & RETENTION ITEMS***

- REFERENCES:** (a) Sect. 594 of FY07 NDAA  
(b) ASN (F&MC) Memo of 9 Nov 06  
(c) SECNAVINST 7042.7 (series)

Command Coins can be purchased using three different sources of funds:

**APPROPRIATED FUNDS** Appropriated funds may be used to purchase items intended for retention and/or recruitment. Item must cost \$50 or less and the command must document the justification for each item issued. Appropriated funds may also be used to purchase items for the recognition of members for specific achievement, outstanding accomplishment, or a unique achievement that contributes to command effectiveness. These items are considered awards.

**OFFICIAL REPRESENTATION FUNDS (ORF)**: Reference (c) provides that ORF may be used to purchase gifts and mementos having a command/unit, Navy, or uniquely American or geographic theme, to be presented to specific classes of individuals such as foreign dignitaries or prominent citizens. ORF may therefore be used to purchase command/unit coins for presentation to only those groups of individuals listed in this instruction. An ORF coin record should be kept, to include the recipient and the reason for the presentation.

**PERSONAL FUNDS**: A commander may purchase coins with their own funds and are not bound by the restrictions noted above. Issuance of these coins are considered a gift and are subject to the gift rules.

(See *GIFTS BETWEEN EMPLOYEES*)

## **Section XIII**

### ***APPENDIX***

- A. NONJUDICIAL PUNISHMENT CHART
- B. SEARCH & SEIZURE CHECKLIST
- C. COURTS-MARTIAL PUNISHMENT CHART
- D. EO INCIDENT REPORTING
- E. SEXUAL HARASSMENT INVESTIGATION CHART
- F. FRATERNIZATION INVESTIGATION CHART
- G. ARTICLE 138 CHECKLIST
- H. EXECUTIVE OFFICER INQUIRY (XOI) GUIDE
- I. USE OF POSITIVE URINALYSIS
- J. ADMINISTRATIVE SEPARATIONS
- K. OVERVIEW OF MILITARY JUSTICE SYSTEM
- L. RELATIONS WITH CIVIL AUTHORITIES FLOW CHART

**ARTICLE 15 PUNISHMENT LIMITATIONS**  
**Navy and Marine Corps**

Imposed By	Imposed On	Bread & Water or DIMRATS (1)	Correctional Custody (2)	Arrest in Quarters (3)	Forfeitures (4 & 5)	Reduction (4 & 6)	Extra Duties (7)	Restriction (7)	Reprimand or Admonition (4)
Flags/Generals in Command	Officers	No	No	30 Days	1/2 of 1 Mo. for 2 Mos.	No	No	60 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-4 to O-6	Officers	No	No	No	No	No	No	30 Days	Yes
	E-4 to E-9	No	No	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
	E-1 to E-3	3 Days	30 Days	No	1/2 of 1 Mo. for 2 Mos.	1 Grade	45 Days	60 Days	Yes
O-3 / Below & OICs (8)	Officers	No	No	No	No	No	No	15 Days (9)	Yes
	E-4 to E-9	No	No	No	7 Days	1 Grade	14 Days	14 Days	Yes
	E-1 to E-3	3 Days	7 Days	No	7 Days	1 Grade	14 Days	14 Days	Yes

- (1) May be awarded only if attached to or embarked in a vessel and may not be combined with other restraint punishment or extra duties
- (2) May not be combined with restriction or extra duties
- (3) May not be combined with restriction
- (4) May be imposed in addition to or in lieu of all other punishments
- (5) Shall be expressed in whole dollar amounts only
- (6) Navy CPOs (E-7 to E-9) may not be reduced at NJP; Marine Corps NCOs (E-6 to E-9) may not be reduced at NJP (Check directives relating to promotion)
- (7) Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum possible for extra duties
- (8) OICs regardless of rank have NJP authority over enlisted personnel only. OIC's and Marine CC may only reduce personnel within their promotion authority.
- (9) Restriction imposed upon commissioned and warrant officers may not exceed 15 days when imposed by a CO below the grade of MAJ or LCDR (JAGMAN 0111a)

## **CO SEARCH & SEIZURE CHECKLIST**

**I. FINDING THE EXISTENCE OF PROBABLE CAUSE TO ORDER A SEARCH:** When faced with a request by an investigator to authorize a search, what should you know before you make the authorization? The following considerations are provided to aid you.

A. Find out the name and duty station of the applicant requesting the search authorization.

B. Administer an oath to the person requesting authorization. A recommended format for the oath is set forth below:

"Do you solemnly swear (or affirm) that the information you are about to provide is true to the best of your knowledge and belief, so help you God?"

C. What is the location and description of the premises, object, or person to be searched?

### **Ask yourself.**

1. Is the person or area one over which I have jurisdiction?

2. Is the person or place described with particularity?

D. What facts do you have to indicate that the place to be searched and property to be seized is actually located on the person or in the place your information indicates it is?

E. Who is the source of this information?

1. If the source is a person other than the applicant who is before you, that is, an informant, see the attached addendum on this subject.

2. If the source is the person you are questioning, proceed to question F immediately. If the source is an informant, proceed to question F after completing the procedure on the addendum.

F. What training have you had in investigating offenses of this type or in identifying this type of contraband?

G. Is there any further information you believe will provide grounds for the search for, and seizure of, this property?

H. Are you withholding any information you possess on this case which may affect my decision on this request to authorize the search?

If you are satisfied as to the reliability of the information and that of the person from whom you receive it, and you then entertain a reasonable belief that the items are where they are said to be, then you may authorize the search and seizure. It should be done along these lines:

"**(Applicant's name)**, I find that probable cause exists for the issuance of an authorization to search **(location or person)** for the following items: **(Description of items sought)** and I authorize **(Applicant's name)** to search **(location or person)** for those items and to seize them if found."

## II. SEARCH AUTHORIZATIONS: INFORMANT ADDENDUM

A. **First inquiry.** What forms the basis of his or her knowledge? You must find what **facts** (not conclusions) were given by the informant to indicate that the items sought will be in the place described.

B. Then you must find that **either** the informant is reliable or his information is reliable.

1. Questions to determine the informant's reliability:

- (a) How long has the applicant known the informant?
- (b) Has this informant provided information in the past?
- (c) Has the provided information always proven correct in the past?  
Almost always? Never?
- (d) Has the informant ever provided any false or misleading information?
- (e) (If drug case) Has the informant ever identified drugs in the presence of the applicant?
- (f) Has any prior information resulted in conviction? Acquittal? Are there any cases still awaiting trial?
- (g) What other situational background information was provided by the informant that substantiates believability (e.g., accurate description of interior of locker room.)?

2. Questions to determine that the information provided is reliable:

- (a) Does the applicant possess other information from known reliable sources, which indicates what the informant says is true?
- (b) Do you possess information (e.g., personal knowledge) which indicates what the informant says is true?

## III. SEARCHES: DESCRIBE WHAT TO LOOK FOR AND WHERE TO LOOK

**Requirement of specificity:** No valid search authorization will exist unless the place to be searched and the items sought are particularly described.

A. Description of the place or the person to be searched.

- 1. **Persons.** Always include all known facts about the individual, such as name, rank, SSN, and unit. If the suspect's name is unknown, include a personal description, places frequented, known associates, make of auto driven, usual attire, etc.
- 2. **Places.** Be as specific as possible, with great effort to prevent the area which you are authorizing to be searched from being broadened, giving rise to a possible claim of the search being a "fishing expedition."

B. ***What can be seized.*** Types of property and sample descriptions. The ***basic rule:*** Go from the general to the specific description.

1. ***Contraband:*** Something which is illegal to possess.

Example: "Narcotics, including, but not limited to, heroin, paraphernalia for the use, packaging, and sale of said contraband, including, but not limited to, syringes, needles, lactose, and rubber tubing."

2. ***Unlawful weapons:*** Weapons made illegal by some law or regulation.

Example: "Firearms and explosives including, but not limited to, one M-60 machine gun, M-16 rifles, and fragmentation grenades, and all component parts thereof."

3. ***Fruits of crimes***

Example: "Household property, including, but not limited to, one G.E. clock, light blue in color, and one Sony fifteen-inch, portable, color TV, tan in color with black knobs."

4. ***Tools or instrumentalities of crime.*** Property used to commit crimes.

Example: "Items used in measuring and packaging of marijuana for distribution, including, but not limited to, cigarette rolling machines, rolling papers, scales, and plastic baggies."

5. ***Evidence which may aid in a particular crime solution:***

Example: "Papers, documents, and effects which show dominion and control of said area, including, but not limited to, canceled mail, stencilled clothing, wallets, receipts."

## MAXIMUM PUNISHMENT CHART

PUNISHMENT	SCM		SPCM		GCM		
	E-4 & below	E-5 & above	EM's	O's & WO's	EM's	WO's	O's
1. Death	NO	NO	NO	NO	YES (*1)	YES (*1)	YES (*1)
2. Dismissal	NO	NO	NO	NO	NO	NO	YES
3. Dishonorable Discharge	NO	NO	NO	NO	YES	YES	NO
4. Bad-Conduct Discharge	NO	NO	YES	NO	YES	NO	NO
5. Confinement	30 days	NO	12 mos.	NO	YES	YES	YES
6. Restriction	60 days	60 days	60 days	60 days	60 days	60 days	60 days
7. Hard Labor Without Confinement	45 days	NO	90 days	NO	3 mos.	NO	NO
8. Forfeiture of All Pay and Allowances	NO	NO	NO	NO	YES	YES	YES
9. Forfeiture of two-thirds pay per month	1 mo. (*2)	1 mo. (*2)	12 mos.	12 mos.	YES	YES	YES
10. Fine	YES (*3/4)	YES (*3/4)	YES (*3)	YES (*3)	YES	YES	YES
11. Reduction to next inferior rate	YES	YES	YES	NO	YES	NO	NO
12. Reduction to lowest paygrade	YES	NO	YES	NO	YES	NO	NO
13 Reprimand	YES	YES	YES	YES	YES	YES	YES

**ALL PUNISHMENTS ARE LIMITED BY THE MAXIMUM ALLOWABLE FOR THE UCMJ ARTICLES VIOLATED AS WELL AS THE TYPE OF COURTMARTIAL THE CASE IS REFERRED TO.**

(\*1) Where authorized or mandatory

(\*2) May extend payment up to two months -- MJM 10-F-2.e

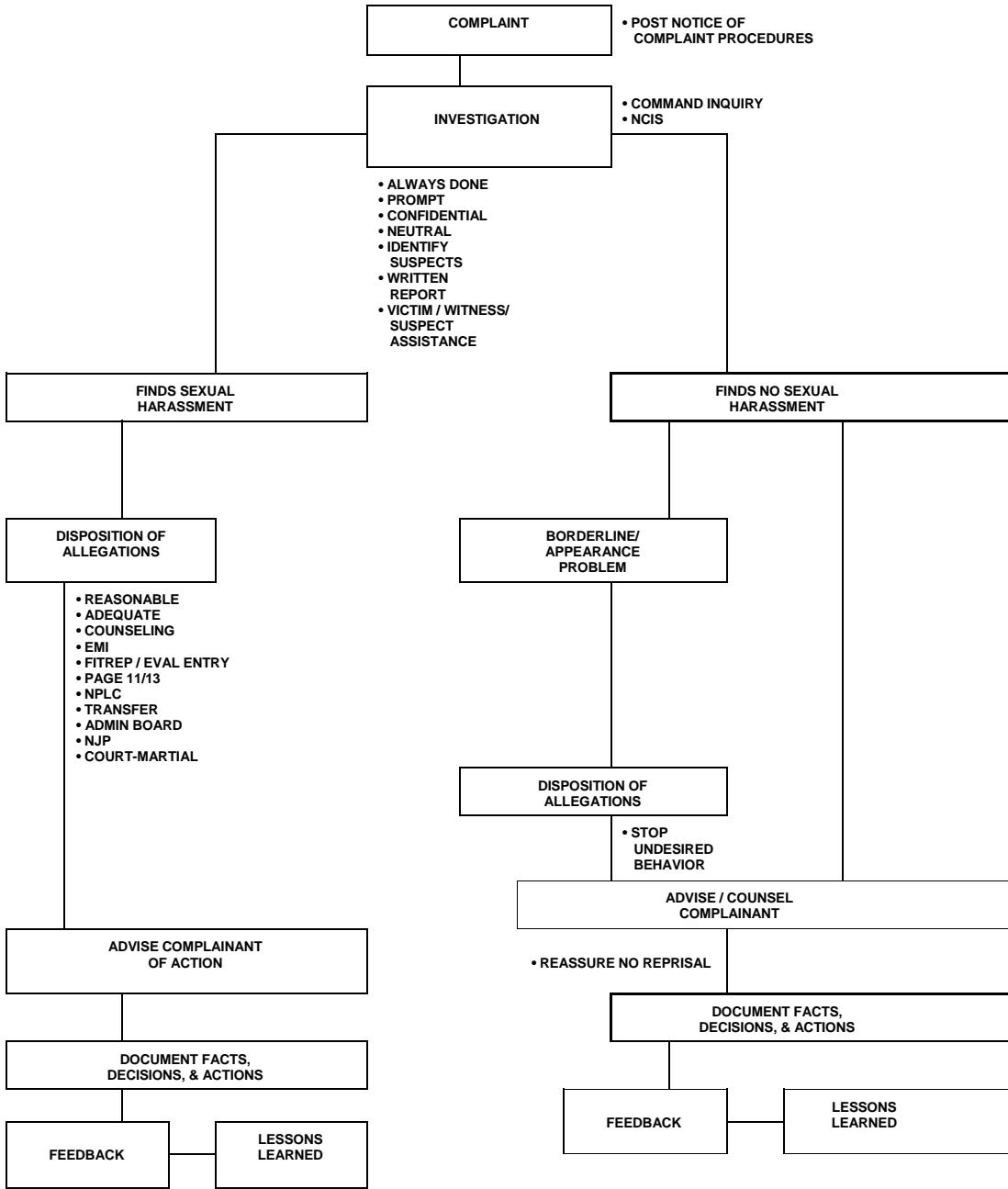
(\*3) If given, a fine or a fine and forfeiture combination may not exceed the maximum amount of forfeitures which may be adjudged in a case (\*4) AT SCM, a fine may not be combined with forfeitures

### EO INCIDENT REPORTING (MINOR/SERIOUS) FROM OPNAVINST 5354.1 (series)

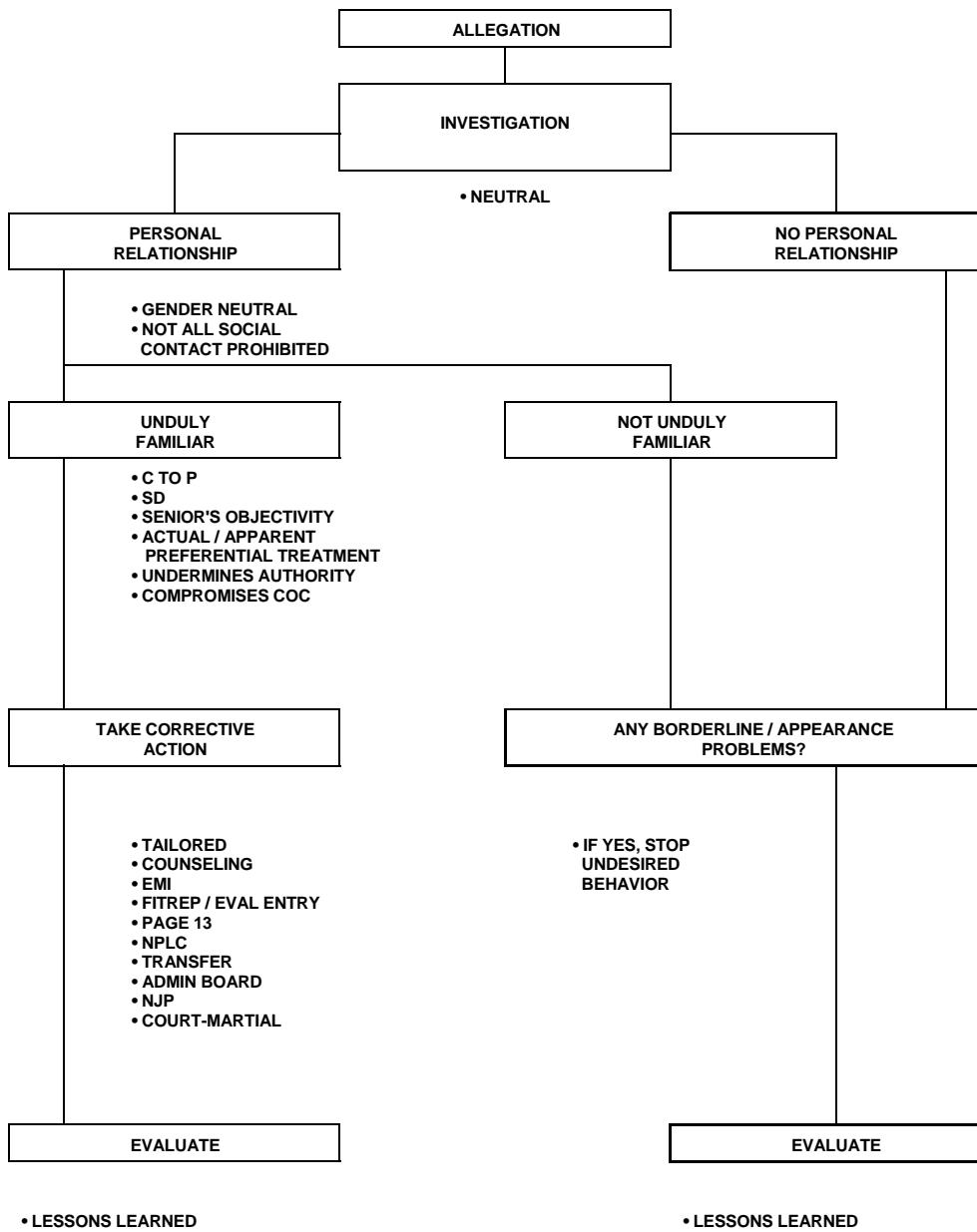
CRITERIA/CLASSIFICATION	NUMBER OF PARTICIPANTS	DURATION	PROPERTY DAMAGE	PERSONAL INJURY	RELATIONSHIP TO OTHER INCIDENTS	THREAT TO AUTHORITY OR MISSION
MINOR	2-5	SHORT, LESS THAN 30 MINUTES	LITTLE OR NONE		AN ISOLATED EVENT	NO THREAT TO AUTHORITY OR MISSION
SERIOUS	6 OR MORE	MORE THAN 30 MINUTES	EXTENSIVE OR SERIOUS PROPERTY DAMAGE (i.e. ARSON)	PERSONAL INJURIES REQUIRING MEDICAL ATTENTION OR DEATH	(1) RELATED TO OTHER MINOR INCIDENTS OR (2) PRESS INTEREST ANTICIPATED OR HAS OCCURRED	(1) PRESENTATION OF DEMANDS AND / OR DEFiance OF AUTHORITY OR (2) DISOBEDIENCE OF LAWFUL ORDERS

MISSION IS / MAY BE THREATENED

## STEPS IN HANDLING SEXUAL HARASSMENT COMPLAINTS



## HANDLING FRATERNIZATION ALLEGATIONS



## ARTICLE 138 REVIEW CHECKLIST

Case name: \_\_\_\_\_

All references are to the JAG Manual unless otherwise noted.

### COMPLAINT

- Complaint is properly forwarded? (§ 0306d)\*
  - Addressed to proper GCMA, via intermediate endorsers. If not, readdress and forward properly.
- Is respondent the proper respondent? (§ 0305b/NAVREGS 1150)\*\*
  - If 138, respondent was complainant's CO at the time of the complained of actions. If not, process as 1150 or return under § 0307b(1), as appropriate.
    - If 1150 and respondent and complainant have the same commanding officer, then it is a "true 1150" and no report to SECNAV is required. All other 1150's are processed using 138 rules.
- See § 0305c if one of the parties has transferred since the alleged wrong.
- Is complainant a proper complainant? (§ 0305a) If not, see § 0307b(1).\*\*
  - Complainant submitted written request for redress to respondent prior to submitting Art 138 complaint? (§ 0306b) If not, complaint may be returned to complainant in accordance with 0307b(2).\*
- Complaint is timely, or late submission justified? (§ 0306a) If not, complaint may be returned to complainant in accordance with § 0307b(2).\*
- Complainant does not join more than one respondent? (§ 0306g)  
If it does, complaint may be returned to complainant in accordance with § 0307b(2).\*
- Complaint does not join more than one complainant? (§ 0306g) If it does, complaint may be returned to complainant in accordance with § 0307b(2).\*
- Complaint is in the proper format? (§ 0306c, Appendix A-3-a) If not, obtain information and include in GCMA's action or the complaint may be returned to complainant in accordance with § 0307b(2).\*
  - Includes complainant's and respondent's personal information?

Includes date wrong discovered and number of days between discovery of wrong and complaint submission?  
 Explains delay, if applicable?  
 Complaint complete with all enclosures/endorsements?  
 Certified complaint to be "true and correct" and is signed, witnessed, and dated?

Complaint alleges a wrong that is a proper subject of a complaint of wrongs? (§§ 0303f, 0304a)\*\*  
     Not recommendations (unless controlling, e.g. advancement recommendations, NEC removal)?  
     Not general policies of DON?  
     Not wrongs that have another DON procedure that provides notice, right to rebut or hearing, and review by superior; includes adseps, BOIs, NJP, courts-martial, DFC.  
     Complaint makes a proper request for relief? (§ 0305)\*\*

\* Defect may be waived by GCMA.

\*\* Defect **may not** be waived by GCMA and requires finding that particular allegation is not cognizable.

**NOTE: FOR THOSE DEFECTS THAT MAY BE WAIVED BY GCMA, FAILURE TO RETURN THE COMPLAINT TO COMPLAINANT AND/OR ADDRESSING COMPLAINT ON THE MERITS IS CONSIDERED A WAIVER OF THE DEFECTS.**

#### GCMA ACTION

Advance copy provided to OJAG Code 13? (§ 0306d)  
 Complainant provided a copy of all endorsements and enclosures? (§ 0307e)  
     Complainant given opportunity to rebut adverse material using A-3-c? (§ 0307e)  
         If endorsements to complainant's rebuttal submissions contain new adverse matter(s), complainant must be given an opportunity to rebut that also.  
 Is this command the proper GCMA? (§ 0305c)  
     If area coordinator is acting as GCMA, written request from original GCMA must be included.  
 Has complaint been withdrawn by complainant? (§ 0306f)  
     Signed withdrawal letter forwarded to OJAG Code 13 with notice of withdrawal to SECNAV.

If complaint returned to complainant because it is incomplete or otherwise procedurally deficient, has complainant been provided with an explanation for return and copies forwarded to SECNAV via OJAG Code 13? (§ 0307b)

GCMA's action completed within 60 days of receiving complaint? (§ 0307f)

Delay must be explained in letter to SECNAV.

Report to SECNAV signed personally by GCMA or official "Acting" (not "by direction")? (§ 0307g)

If GCMA cannot effect redress granted, file forwarded to SECNAV via officer who may effectuate redress (e.g., CNP)? (§ 0307h)

Report to SECNAV in proper format, including complaint and all enclosures and endorsements? (§ 0307j)

Report must discuss each allegation of wrong and conclude:

whether it is cognizable, and if it is cognizable

whether it is with merit or not, and if the allegation has merit

whether relief is appropriate.

Complainant advised in writing of action on complaint? (§ 0307k)

Note: this requirement may be satisfied by sending complainant copy of report to SECNAV.

For USMC commands, report to SECNAV sent via Commandant of the Marine Corps (JAR). (§ 0307j)

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Signed by reviewing official

## **EXECUTIVE OFFICER'S INQUIRY (XOI)**

1. Obtain the report chit, all written statements, and all physical and documentary evidence relating to the alleged offense from the legal officer. (You may want to consult with the legal officer prior to XOI).
2. Call in the accused and all reasonably available witnesses who can testify about either the alleged offense or extenuating (E), mitigating (M), or aggravating (A) circumstances concerning the alleged offense.
3. Inform the accused that the CO is contemplating the imposition of NJP and that this informal hearing -- the XOI -- is part of the NJP process. The accused may not refuse XOI.
4. Describe the specific offense(s) to the accused, including the article of the UCMJ that was allegedly violated.
5. If applicable, advise the accused of the right to refuse NJP. (Accused can never refuse XOI.)
6. Advise the accused (s)he does not have to make a statement regarding the offense(s) and that any statement made by him / her can be used as evidence against him / her at XOI and NJP.

**Note:** If it is reasonably foreseeable that the accused's statements during the XOI may be considered for introduction in a later court-martial, an explanation of rights and a waiver—in the format of appendix A-1-m of the *JAG Manual*—will have to be obtained from the accused during the hearing, before proceeding further.

7. Ask the accused what happened.
  - a. If (s)he admits guilt, the accused should be allowed to articulate any E & M.
    - Ask the witnesses to testify on matters of E & M or A.
  - b. If (s)he denies guilt, the accused should be asked for his/her version of the facts.
    - Ask the witnesses to testify about the alleged offense.
    - Inform the accused of any other evidence against him/her concerning the alleged offense (i.e. written statements and/or physical and documentary evidence).
    - Allow for rebuttal, as appropriate.
    - Ask the witnesses to testify on matters of Extenuation, Mitigation and Aggravation.
8. Ask the accused if (s)he would like to make a final statement.

9. If the CO has given you the power to dismiss cases and you feel dismissal is warranted, either dismiss the case outright or dismiss it with a warning. (Such action does not preclude later NJP for the same offense.) You may also impose nonpunitive measures. If you feel NJP is warranted, indicate this on the report chit and return all materials to the legal officer who will take appropriate action.

**OPNAVINST 5350.4C**  
**USE OF DRUG URINALYSIS RESULTS**

	Usable in disciplinary proceedings	* Usable as basis for separation	* Usable for characterization of service
1. Search or Seizure - member's consent - probable cause	YES YES YES	YES YES YES	YES YES YES
2. Inspection - random sample - unit sweep	YES YES	YES YES	YES YES
3. Medical - general diagnostic purposes	YES	YES	YES
4. Fitness for duty - command-directed - competence for duty - mishap / safety investigation	NO NO NO	YES YES YES	NO NO NO
5. Service-directed - treatment facility staff (military) - alcohol rehab testing - naval briggs - entrance testing - accession training pipeline	YES NO YES NO YES	YES YES YES YES YES	YES NO YES **NO YES

\* (USN ONLY): YES, if sample is subject to strict chain of custody and tested at NAVDRUGLAB or DOD approved lab.

\*\* YES for reservists recalled to active duty (except Delayed Entry Program participants)

MILPERSMAN 1910-704

## Determining Separation Authority (SA)

**Responsible Office** BUPERS (Pers-83) **Phone:** DSN 882-4432  
COM (901) 874-4432  
FAX 882-2624

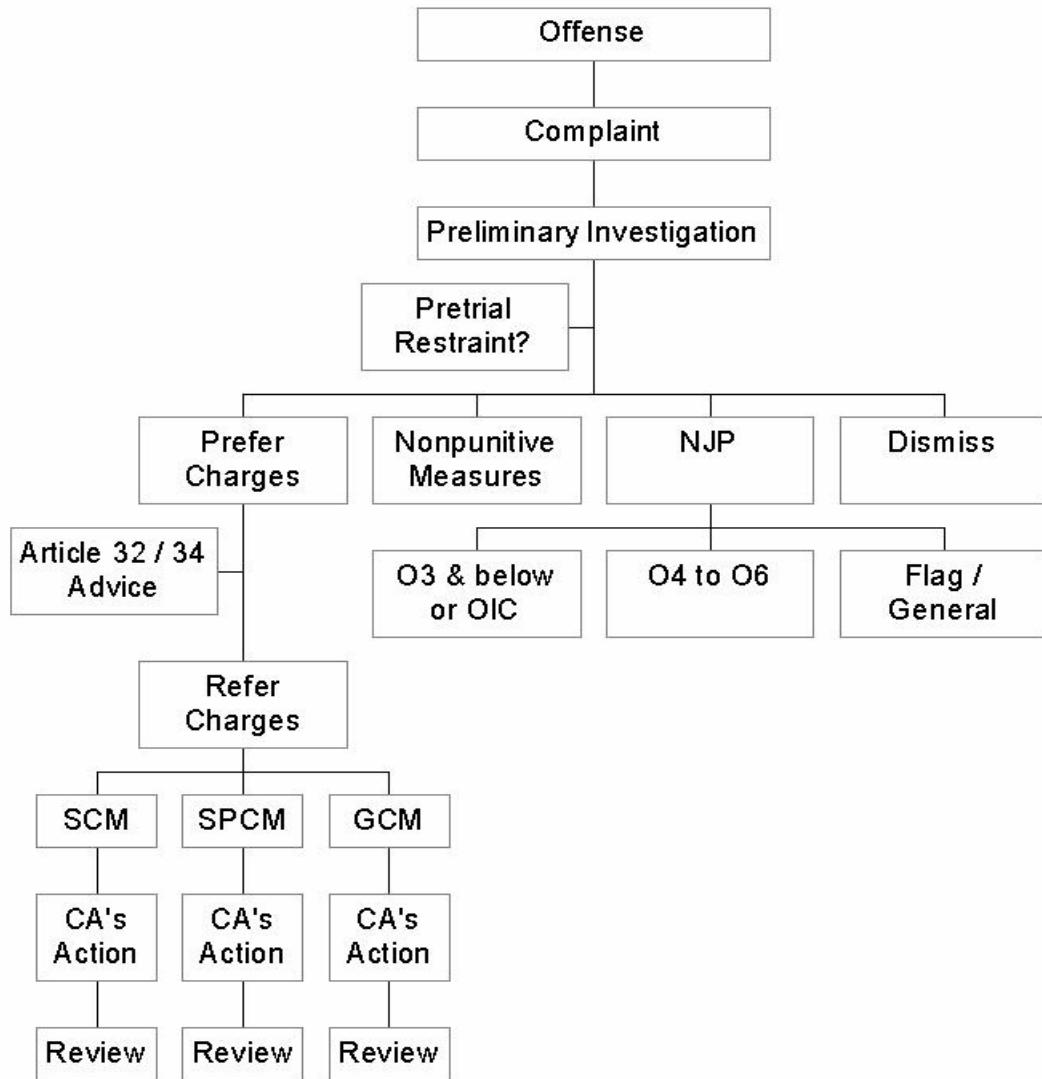
**Separation Authority** Use this table with MILPERSMAN 1910-706 to determine Separation Authority.  
(NOTE: COG refers to Convenience of the Government.)

If the member is being separated by reason of . . .	THEN the separation authority is . . .
<ul style="list-style-type: none"> <li>• Selected Changes in Service Obligation - Inactive Reserves</li> <li>• Selected Changes in Service Obligation - Immediate reenlistment</li> <li>• Selected Changes in Service Obligation - Within 90 days of EAOS</li> <li>• Expiration of Service Obligation</li> </ul>	Commanding Officer
<ul style="list-style-type: none"> <li>• COG – dependency or hardship</li> <li>• COG – pregnancy or childbirth</li> <li>• COG – surviving family member</li> <li>• GOC – Reservist becomes a minister</li> <li>• COG – other designated physical or mental conditions</li> <li>• COG – personality disorder</li> <li>• COG – parenthood (if less than 1 year obligated service and not in critical rating)</li> <li>• COG – review action</li> <li>• COG – early release to further education</li> <li>• Entry level performance and conduct</li> <li>• Unsatisfactory performance</li> <li>• Drug abuse rehabilitation failure</li> <li>• Alcohol abuse rehabilitation failure</li> <li>• Family Advocacy Program Rehabilitation Failure (best interest of the service cases to SECNAV)</li> <li>• Defective Enlistments and Inductions – erroneous</li> <li>• Defective Enlistments and Inductions – minority</li> <li>• Defective Enlistments and Inductions – defective enlistment agreements</li> <li>• Defective Enlistments and Inductions – separation from the delayed entry program</li> </ul>	Special Court-Martial Convening Authority (SPCMCA) or higher
<ul style="list-style-type: none"> <li>• Misconduct – a pattern of misconduct</li> <li>• Misconduct – commission of a serious offense</li> <li>• Misconduct – civilian conviction</li> <li>• Misconduct – drug abuse</li> <li>• Defective Enlistments and Inductions – fraudulent entry into the naval service</li> <li>• Unsatisfactory participation in the ready reserve</li> </ul>	<p>GCMCA or higher when the Administrative Board procedure was used and:</p> <ul style="list-style-type: none"> <li>• Board recommended OTH</li> <li>• Board recommended retention</li> <li>• Member waived a Board</li> <li>• Member requested a conditional waiver</li> </ul> <p>SPCMCA or higher when:</p> <ul style="list-style-type: none"> <li>• The notification procedure was used</li> <li>• The Administrative Board procedures were used and Board recommended separation with Honorable, General or Entry Level Separation.</li> </ul>

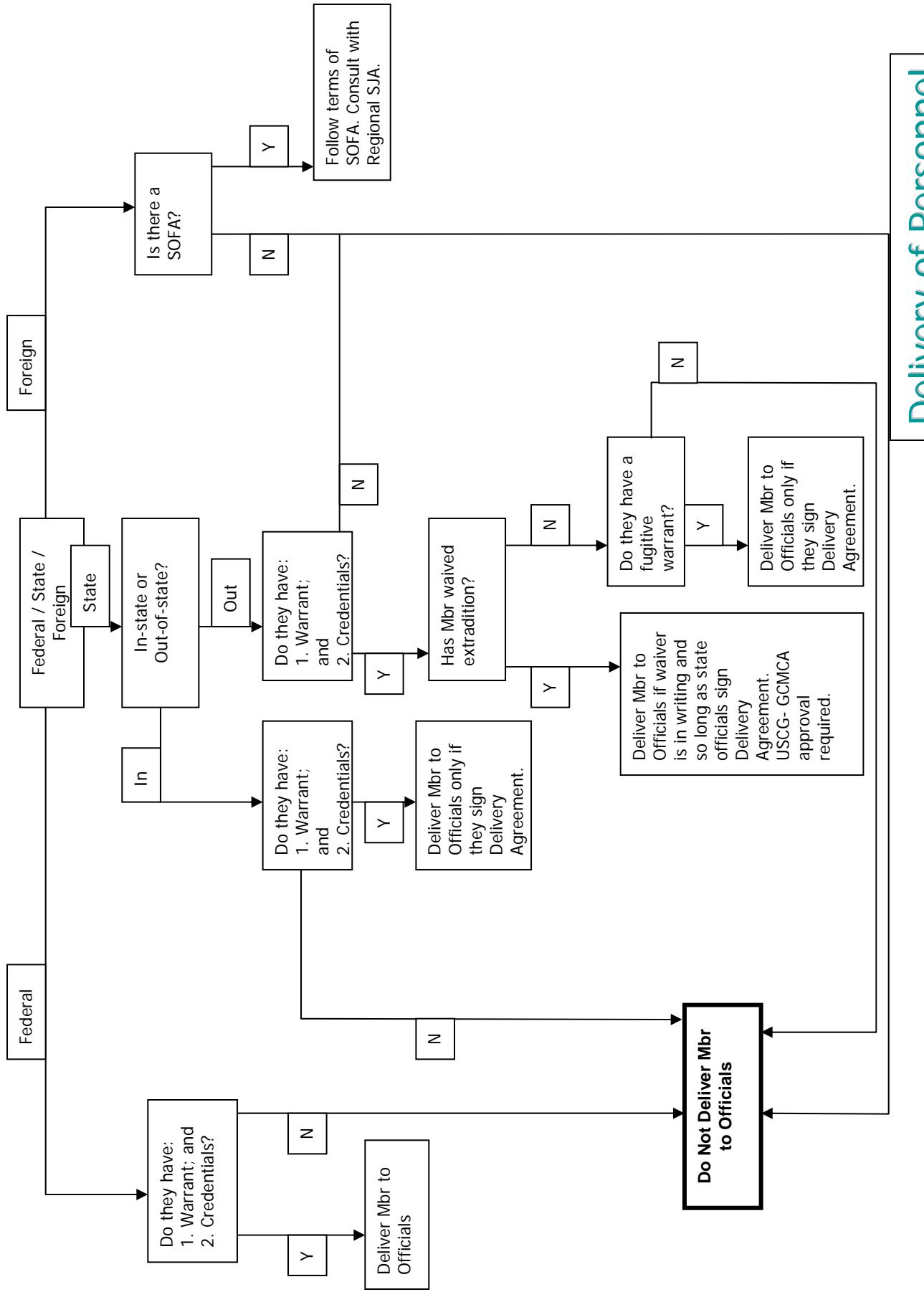
Weight Control Failure	GCMCA or higher
Separation in lieu of trial by court-martial	GCMCA unless request is based solely on an absence without leave of more than 30 days, then SPCMCA is SA. BUPERS (Pers-483) is SA if request is based on homosexual conduct referred to court-martial
<ul style="list-style-type: none"> <li>• Selected Changes in Service Obligation – General Demobilization or reduction in authorized strength</li> <li>• Selected Changes in Service Obligation – Acceptance of active duty commission or appointment</li> <li>• COG – Conscientious objection</li> <li>• COG – Being an alien</li> <li>• When member has Physical Evaluation Board (PEB) action completed or pending, and at the same time being administratively processed for separation.</li> <li>• Homosexual conduct</li> </ul>	Chief of Naval Personnel
<ul style="list-style-type: none"> <li>• Disability</li> <li>• Best interest of the service (BIOTS)</li> </ul>	Secretary of the Navy

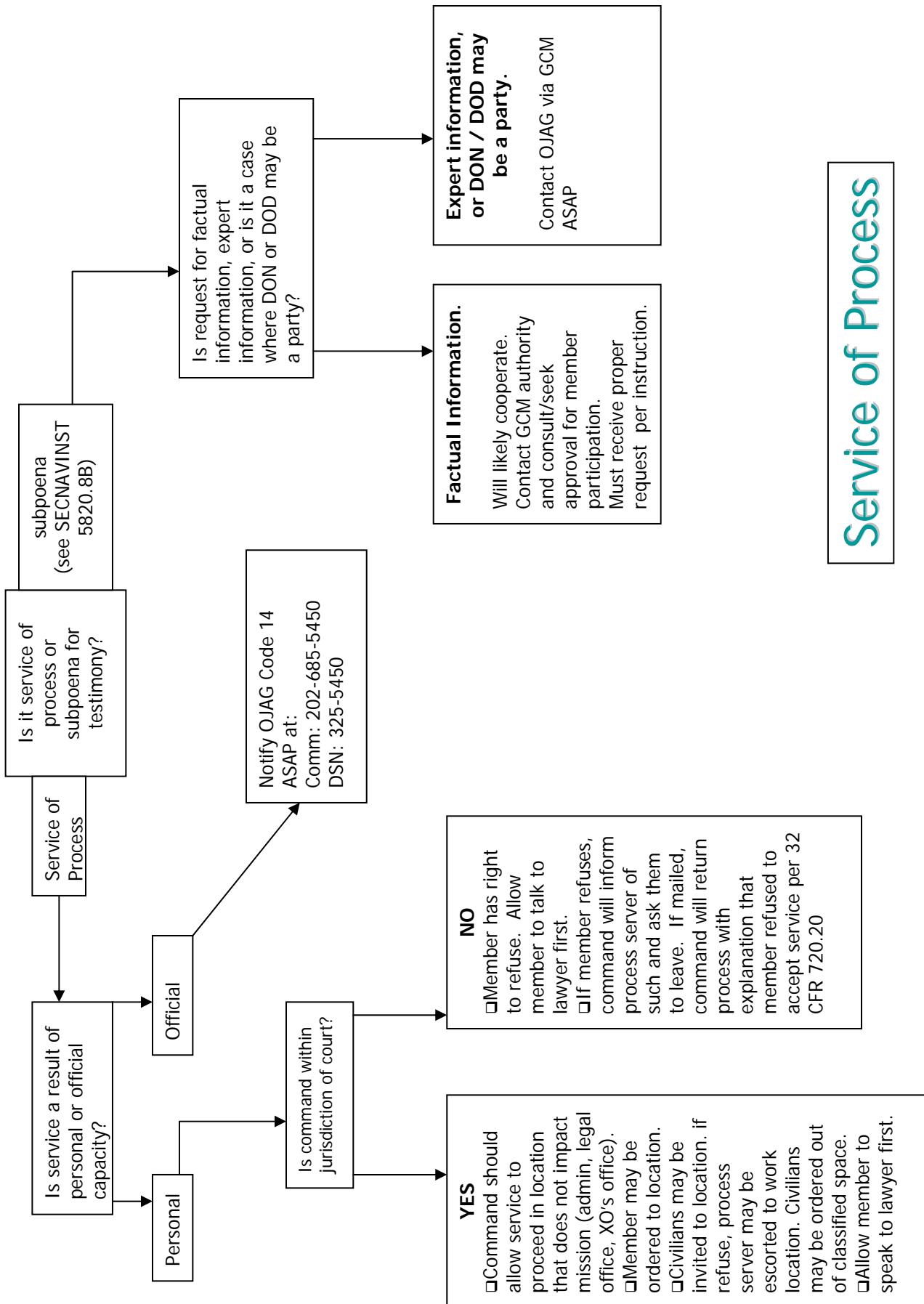
NOTE: Review individual reason processing articles to determine correct BUPERS code where ADSEP should be mailed.

## OVERVIEW OF MILITARY JUSTICE SYSTEM



RELATIONS WITH CIVIL AUTHORITIES FLOW CHART





## **LOCAL DIRECTORY**

(Write in name and phone number of personnel in your local area)

### **Naval Legal Service Office (NLSO) / Region Legal Service (RLSO):**

- CO / OIC:

- Command Service Officer:

(Assist all commands without permanent Staff Judge Advocates assigned)

- Trial Counsel:

(Represents government (Prosecution) in courts-Martial)

- Defense Counsel:

(Represents members under investigation or facing disciplinary action)

- Legal Assistance Attorney:

(Assists members and dependents with personal legal matters i.e. wills)

### **Local Staff Judge Advocate:**

(Area coordinator & Flag JAGS are ethics advisors)

### **ISIC JAG or first JAG in chain of command:**

### **Others:**

#### **CAAC:**

(Assist area commands with Alcohol / Drug incidents)

#### **Equal Opportunity Officers:**

(Assist with discrimination complaints / sexual harassment / fraternization)

#### **Family Advocacy Representative (FAR):**

(Assist area commands with domestic violence and child abuse incidents)

### **Naval Criminal Investigative Service:**

- Senior Agent In Charge (SAC):

- Special Agent:

